

Selected Documents from Claim File

Claim No. LRF-1999-1210-01

Claim Amt. : \$5,740.74 Initial Entry Date : 12/28/1999

Claimant : Bedrock Masonry

Property Desc. : See Comments

Property Addr. : 16162 S Stepside Rd

Riverton, UT 84065

STATUS : PENDING (BOARD HEARING)

Comments

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UserID: kschwab

Parcel #32-21-200-040 Beginning at a point East 3960 feet and North 165 feet from the West 1/4 corner of Section 21, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence West 660 feet; thence North 165 feet; thence East 660 feet; thence South 165 feet to the point of beginning. Containing 2.50 acres.

## Associated Addresses

## Type : Claimant Legal Counsel

DOPL # : -

Firm Nm :

Name : Scott B Mitchell

2469 E 7000 S STE 204

Salt Lake City, UT 84121

(801) 942-7048

## Type : Claimant Address

DOPL # : 96-323969-5501

Firm Nm : Bedrock Masonry

Name : Nathan S Goodrich

397 N 300 E

Bountiful, UT 84010

(801) 296-1173

## Type : Home Owner - Secondary

DOPL # : -

Firm Nm :

Name : Carol A Cise

16162 S Stepside Rd

Riverton, UT 84065

(801) 256-9450

## Type : Home Owner - Primary

DOPL # : -

Firm Nm :

Name : David M Cise

16162 S Stepside Rd

Riverton, UT 84065

(801) 256-9450

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## Type : Non-Paying Party Legal Counsel

DOPL # : -

Firm Nm :

Name	:	Joseph R Goodman
		10885 S State
		Sandy, UT 84070
		(801) 576-1400
Type	:	Non-Paying Party - Primary
DOPL #	:	87-247387-5501
Firm Nm	:	Michael A Mower
Name	:	Legend Builders Inc
		1639 Heatherwood Circle
		Sandy, UT 840925840
		(801) 523-6260
Type	:	Original Contractor/Developer
DOPL #	:	87-247387-5501
Firm Nm	:	Michael A Mower
Name	:	Legend Builders Inc
		1639 Heatherwood Circle
		Sandy, UT 840925840
		<del>(801) 523-6260</del> 576-1400
DEMOGRAPHIC INFORMATION		
Claim #:	LRF-1999-1210-01	Claimant: Bedrock Masonry
DOPL Licensee:	yes	
Entity Type:	Other	
Number of Employees:	1-4	
Gross Annual Revenue:	50K-99K	
Years In Business:	5-9	
Claiming Capacity:	Subcontractor	
NON-PAYING PARTY		
DOPL Licensee:	no	
Entity Type:		
===== CLAIMS PROCESSING INFO =====		
	Date Recieved	Date Forwarded
Front Desk	12/10/1999	
LRF Special-Setup,Filing,CRIS	12/28/1999	12/28/1999
Permissive Party Response	01/27/2000	DEADLINE*****
Screen C/D Letter	01/04/2000	
Page: 2		
Comments	Page: 001	UserID: ewebster
Conditional Denial letter sent January 4, 2000 with response deadline of February 3, 2000.		
Reasons for conditional denial:		
1. Original contractor not licensed.		
2. No documentation of costs.		

Substantive Review 04/04/2000

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Claim is formal and cannot be settled by stipulation. This review is intended only to present the facts as they are known to DOPL on this date. No recommendation is made by the Examiner as to how the claim should be disposed of. Therefore, Examiner recommends Board members review the Required Factual Findings section in preparation for formal hearing.

Claim Disposition	Active	
Claims EX Screen w/AG	04/04/2000	
LRF Spec Sched Hearing	03/02/2000	03/06/2000
Board Hear Claim	04/19/2000	

**JURISDICTIONAL CHECKLIST =====**

Completion Of QS	01/05/1999	65
Civil Bkcy Filing	03/11/1999	31
Difference	65	<u>6</u>
		102

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Qualified services date per lien (pg 23) and invoice (pg 15).  
Civil action filing date per court date stamp (pg 18)

Civil Judg/Bkcy Filing	08/30/1999
LRF App Filing	12/10/1999
Difference	102

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Bankruptcy filing date per U. S. Bankruptcy Court telephone database.  
Claim filing date per DOPL date stamp (pg 1).

Civil action was stayed by bankruptcy filing.

**===== COMPLETE APPLICATION CHECK-LIST =====**

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Form Submitted	Yes	12/10/1999	
Form Completed	Yes	12/10/1999	
Fee	Yes	12/10/1999	9347-61-0065 ICN
Signed Cert/Aff	Yes	12/10/1999	
Cert of Service	Yes	12/10/1999	
Demog. Questionnaire	Yes	12/10/1999	

**===== SUPPORTING DOCUMENTS =====**

Written Contract	Inc	Written Contract
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Licensing Statute	No	License	
Full Payment	Yes	Affidavit Ind/Evidence	12/31/1998
Civil Action/Bankrupt	Yes	Complaint	01/05/1999
Entitlement to Pmt.	Inc	Bankruptcy Filing/Ind Evid	12/09/1999
Exhaust Remedies	Yes	Bankruptcy Filing	12/09/1999

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary Yes

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Claimant holds license 96-323695-5501 as an S291 Stone Masonry Contractor. That license was issued June 17, 1996 and has been active & in good standing since issuance.

Claimant registered with the Fund June 17, 1996 (ICN 6169-60-0084). Registration has been current since that date.

Written contract exists Bd

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Claimant provided copies of a complete contract between the homeowners and the Original Contractor. The contract specifies the construction work to be done and was signed by all required parties January 15, 1998 (pg 16 - 17).

Contract is with possible unlicensed entity--see below.

Original Contractor Licensed Bd

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The contract clearly identifies Legend Builders, Inc. as the original contractor. Michael Mower, owner and qualifier for Legend Builders, Inc., held license 87-247387-5501 as a sole proprietorship. However, the corporate entity Legend Builders, Inc. did not apply for licensure.

Homeowner argues that because of Mower's sole proprietorship license, Homeowner should be entitled to protection of the Act despite the details of the legal entity that actually executed the contract.

Relevant laws are:

Utah Code Ann. 38-11-204(3)(a)(i) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services, to obtain the performance

of qualified services by others, or for the supervision of the performance by others of qualified services in construction on that residence.

Utah Code Ann. 58-55-301(1)(a) Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-55-305.

Utah Code Ann. 58-55-102(21) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

Utah Admin Rule R156-55a-311 A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or

business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Utah Code Ann. 58-55-501(10) Unlawful conduct includes . . . allowing one's license to be used by another except as provided by statute or rule.

**Owner PIF to Contractor** **Yes**

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Owner issued a receipt of full payment and waiver of lien rights to the homeowner in acknowledgement of full payment. A copy of that receipt has been provided by the Claimant (pg 14).

**Residence Own/Occ as defined** **Yes**

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Homeowner provided a complete Owner-Occupied Residence affidavit (pg 9). The affidavit shows construction was completed and occupancy began in January 1999.

**Residence Single Family/Duplex** **Yes**

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Per Owner-Occupied Residence affidavit.

**Contract For QS** **Yes**

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Claimant provide invoice showing installation of 450 sq ft of rock masonry on the incident residence (pg 15)

**Claimant brought Civil Action** **Yes**

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Claimant's civil action was stayed by bankruptcy (confirmed per U. S. Bankruptcy court telephone database).

Original Contractor has provided substantial evidence indicating Claimant is not entitled to payment and civil action would have resulted in judgement in Original Contractors favor. Board will have to review evidence to determine whether any payment is owed to Claimant.

**Exhausted Remedies** **Yes**

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NPP was granted discharge in bankruptcy December 9, 1999. Claimant was listed as discharged creditor (per U. S. Bankruptcy court telephone database).

**Adequate \$ in LRF Fund** **Yes**  
**Statutory Limit/Payment** **no**

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No other claims for this residence.

Exceed Monetary Cap

No

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No previous claims by this Claimant.

Un-reimbursed Payments

no

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Fund has made no payments on behalf of this Claimant.

Claim Number:	LRF-1999-1210-01	NCA Number:		Claim Type:	Formal
Claimant Name:	Bedrock Masonry				
	Jdg. \$ Informal / Payable \$ Formal	Apportioned % 100.00	CLAIMED	DIFFERENCES	
PRINCIPAL AMOUNT	3,950.00	3,950.00	3,950.00	0.00	
ATTORNEY FEES	987.50	987.50	1,365.00	377.50	
COSTS	0.00	0.00	100.00	100.00	
INT. % 12.00	433.74	433.74	325.74	-108.00	
PRE SUB-TOTAL	1,421.24	1,421.24	1,790.74	369.50	
ATTORNEY FEES	0.00	0.00	0.00	0.00	
COSTS	0.00	0.00	0.00	0.00	
INT. % 0.00	0.00	0.00	0.00	0.00	
POST SUB-TOTAL	0.00	0.00	0.00	0.00	
TOTAL*****	5,371.24	5,371.24	5,740.74	369.50	

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Qualified services amount per invoice (pg 15)

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PRE JUDGEMENT ATTORNEY FEE COMMENT

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Claimant provided attorney's affidavit of fees showing total fees of \$1,365 (pg 12 - 13). Examiner believes fee amount shown is reasonable.

Utah Admin Rule R156-38-204d(2)(ii) limit for this claim is \$987.50.

PRE JUDGEMENT COSTS COMMENT

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Awaiting documentation of costs (see substantive review)

PRE JUDGEMENT INTEREST COMMENT

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Interest calculated through conditional denial date. Additional interest will be added if claim is approved.

Per UCA 38-11-203(3)(c) interest calculated at 12% of qualified services from payment due date through claim approval date net of delays attributable to the Claimant.

Dates Used This Claim:

DUE DATE: February 4, 1999. Claim does not specify payment due date. Assuming terms of n/30 from qualified service date.--interest begins this date.

CONDITIONAL DENIAL: January 4, 2000--interest suspended this date.

POST JUDGEMENT ATTORNEY COMMENT

POST JUDGEMENT COSTS COMMENT

POST JUDGEMENT INTEREST COMMENT

NO Disposition Checklist Information

MICHAEL MOWER  
1623 East Heatherwood Circle  
Sandy, Utah 84092  
(h) 619-1730 (cell) 450-3241

January 12, 2000

W. EARL WEBSTER, CPA  
State of Utah  
Department of Commerce  
Division of occupational & Professional Licensing  
Heber M. Wells Building  
160 East 300 South  
Salt Lake City, Utah 84114

Subject: Lien Recovery Fund Claim No: LRF-1999-1210-01  
Response to Claim.

I would like to respond to the letter I received from your office dated December 23, 1999. Although I feel that because Legend Builders, Inc. has been closed and I have no responsibility in this matter, I would like to respond for ethical reasons.

Nathan Goodrich and Legend Builders, Inc. (referred to hereafter as LBI) did business with one another over a period of a couple of years. Nathan subcontracted work from LBI as a stone mason. I considered our relationship very good until the winter of 1998.

The problem began when Nathan in voiced LBI for a material draw on a job he was going to do for LBI. The reason explained for the material draw was to pay the supplier to have the materials shipped. The material in this case was "Cultured Stone" simulated stone veneer. The owners of the "Project" selected this material over real stone (which the plans showed) because it was much cheaper. Months passed without a delivery from his supplier. His explanation was that his supplier was running him around and treating him unfairly by giving material reserved for him to other contractors. I later found out from the supplier that Nathan never deposited any money. It was apparent that Nathan had spent the money elsewhere leaving my job delayed with no material.

After substantially delaying the job (long before I knew that he had never deposited the money for materials), Nathan offered to install real stone for the same price as the synthetic

stone in the interest of expediting the "Project." I consulted with the owner and he agreed with the change as long as the cost did not increase. This message was passed along to Nathan and he began the stone work with real stone.

At about this same time, I was considering that the "Project" would be my last job and as soon as it was completed, I would close LBI. While having a conversation with Nathan (while our relationship was still good), he offered me a position with his masonry company to help him become more efficient and profitable. Based on the work flow projections he "conservatively estimated" I accepted his offer. I agreed to do work with him as a "partner but not a partner" as he liked to put it.

Our agreement was that we would work on the jobs and get paid \$7.00 per square foot for the rock we installed. We would then split any profit left over after paying ourselves for labor, any other laborers used, material and a 10% commission to whoever acquired the job. I began working part time with Nathan while finishing other out my other jobs. As I worked with Nathan, I quickly began to see that he was in an extremely unstable financial situation. I learned from the owners of the jobs we were involved with, that he would get paid and never bother to let me know. He was paying himself and others from these funds and making excuses to me that he and I would have to wait a while longer until the owners paid him. This was when the real problems began. Let me suffice to say that I quit doing work with him after a few weeks and had a very difficult time getting him to finish the "Project."

Following is a breakdown of the financial exchanges between Nathan Goodrich and LBI and Nathan Goodrich and Michael Mower.

<u>Nathan Goodrich</u>	<u>LBI</u>	<u>Michael Mower</u>
<u>June 25, 1998</u> - Invoiced LBI		
\$2,500.00 for materials	<u>July 2, 1998</u> - paid \$2,500.00 to Nathan for materials.	
		<u>August 31, 1998 thru</u> <u>October 12, 1998</u> - Worked with Nathan as a stone mason. Worked on three jobs. Accrues \$4,778.00 in earnings through this period. <u>September 18, 1998</u> - Nathan

<u>October 1, 1998</u> - Offers to do the job in real stone for the same price.	<u>October 2, 1998</u> - Accepts offer.	pays \$500.00 towards the total amount leaving a
	<u>October 15, 1998</u> - Finds out that Nathan never paid for materials.	\$4,2778.00 balance.
<u>December 1, 1998</u> - Invoiced for "Project" prior to its completion for \$3,900.00. Amount used per square foot was \$14.00 per square foot instead of the \$11.00 originally agreed to. Total amount due should be \$2,600.00.	<u>December 21, 1998</u> - Owes \$2,600.00 to Nathan for work provided.	
<u>December 21, 1998</u> - Finishes "Project." Total amount owed for work is \$2,600.00.	<u>December 21, 1998</u> - Total amount owed to Nathan for work performed is \$2,600.00.	<u>December 21, 1998</u> - Total amount owed for labor and material provided is \$42778.00.

I hope that the above time line illustrates the situation between Nathan Goodrich and LBI and Nathan Goodrich and Michael Mower. I am not going after Nathan for money he owes me, but I am very interested in making sure that he is not awarded any funds for work provided for me or LBI since there is a negative balance due to him. Please call day or night with any questions.

Sincerely,

Michael Mower

P.S. I have attached a copy of a counterclaim I had submitted when Nathan Goodrich first tried to collect from me unsuccessfully.

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE  
LIEN RECOVERY FUND CLAIM OF  
**NATHAN GOODRICH DBA**  
**BEDROCK MASONRY**  
REGARDING THE CONSTRUCTION BY  
**LEGEND BUILDERS INC.**  
ON THE RESIDENCE OF  
**DAVID AND CAROL CISE**

**O R D E R**

Case No.  
LRF-1999-1210-01

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah. The Director reiterates and duly acknowledges this Order is subject to administrative and judicial review.

Dated this 27 day of November, 2000.



  
A. Gary Bowen  
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63-46b-12 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code.





being fully advised on the premises, now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order for review and action by the Division:

#### **FINDINGS OF FACT**

1. Based on the Claimant's application, supporting documentation relative thereto and the joint stipulation between Claimant and the Division, Claimant has satisfied all requirements necessary for payment from the Residence Lien Recovery Fund other than the remaining issue to be addressed and resolved by the Board.

2. The original contractor on the residence in question was Legend Builders, Inc. David Cise and Carol Atkinson entered into a contract with Legend Builders, Inc. on January 17, 1998, whereby Legend Builders, Inc. was to construct a new home for \$279,960.11. Claimant Nathan Goodrich, doing business as Bedrock Masonry, furnished supplies to Legend Builders, Inc. which were used on the construction project in question.

3. Michael Mower was the owner, president and sole shareholder of Legend Builders, Inc. Mr. Mower signed the construction contract - on behalf of Legend Builders, Inc. - in his capacity as president of that corporation. Mr. Mower was a licensed contractor during the time under review. However, Legend Builders, Inc. was not licensed as a general contractor.

4. Legend Builders, Inc. was incorporated in January 1998.

Based on the substantial, undisputed and credible evidence presented, no annual business meetings, shareholder meetings or director meetings were ever conducted relative to that corporation. No other officers or directors were ever elected relative to that corporation and no corporate business records were maintained for that entity. Legend Builders, Inc. is no longer in business.

5. Mr. Mower had previously done business as Michael Mower Construction, a sole proprietorship. He incorporated that entity in January 1997. Michael Roberts was the vice-president of that corporation. No shareholder or director meetings were conducted relative to that corporation. No votes on business matters were ever taken as to that entity and no corporate records were maintained.

6. Based on the undisputed, substantial and credible evidence presented, Mr. Mower, Mr. Cise and Ms. Atkinson believed Mr. Mower was duly authorized to provide construction services - through Legend Builders, Inc. - based on his contractor's license. The parties to the contract thus believed the construction project was based on a contract with a licensed contractor.

7. The construction contract recites cultured stone would be provided relative to the fireplace for the residence. Legend Builders, Inc. contracted with Claimant to provide 450 square

feet of cultured stone at \$11 per square foot. Claimant initially received a \$2,500 payment in July 1998 on the materials for the fireplace.

8. There was an extended and unexpected delay in the delivery of the cultured stone which Claimant ordered for the fireplace. Given that delay, and based on the substantial and more credible evidence presented, Claimant, Legend Builders, Inc., Mr. Cise and Ms. Atkinson verbally agreed Claimant would provide natural stone for the fireplace at the same price as would have been charged for cultured stone. The work on the fireplace was completed in late November 1998.

9. Claimant issued a December 1, 1998 invoice to Legend Builders, Inc. That invoice reflects a charge of \$14 per square foot which represents the typical price for natural stone. That invoice reflects a credit of \$2,500 for the payment initially made on materials for that job. The invoice thus reflects an amount due of \$3,950.

10. Mr. Mower had provided masonry services for Claimant on two other projects between September and October 1998. Based on the substantial and more credible evidence presented, Mr. Mower was to receive \$3,800 for his services on those jobs. Mr. Mower received payments totaling \$2,300 from Claimant, who acknowledges Mr. Mower is still owed approximately \$1,500 for the services which he provided in that regard.

11. Mr. Mower subsequently filed a Chapter 7 personal bankruptcy and when he ceased doing business as Legend Builders Inc, that corporation had no assets. This record does not reflect when the bankruptcy proceeding was initiated or the corporate entity ceased business. Claimant filed a Chapter 13 bankruptcy. However, this record does not reflect when that proceeding was initiated.

12. Claimant seeks payment for qualified services totaling \$3,950 on the residence in question. Claimant seeks attorney fees totaling \$1,365, of which only \$987.50 could be awarded based on the rule which governs payment of such fees from the Fund. Claimant seeks costs totaling \$100, of which \$95.16 is adequately documented as to possibly warrant payment from the Fund. Allowable prejudgment interest, calculated to the date of the hearing in this proceeding, would total \$433.74. Claimant thus seeks recovery totaling \$5,466.40 from the Fund.

#### **CONCLUSIONS OF LAW**

Claimant, Legend Builders, Inc. and the homeowners contend the construction project under review was based on a contract with a licensed contractor, the corporate status of Legend Builders, Inc. existed in name only and the statutes which govern payment from the Residence Lien Recovery Fund should be duly construed to protect claimants, licensed contractors and homeowners. Based on the circumstances of this case, Claimant

thus asserts payment from the Fund should be made.

Claimant acknowledges he owed Mr. Mower \$1,500 as unpaid compensation for labor provided on two unrelated projects. Claimant thus concedes its attempt to now obtain payment for qualified services provided to the homeowners could be reduced by \$1,500 to reflect that indebtedness. However, Claimant further notes that - as a matter of law - any amount which he owed to Mr. Mower was discharged by reason of Claimant's bankruptcy. Claimant thus contends it would be unwarranted to reduce any claim awarded in this proceeding to reflect that indebtedness.

The Division asserts the homeowners did not have a contract with a licensed contractor, the statute which governs potential recovery from the Fund requires such a contract and this Board may not disregard that statutory requirement as to award any recovery from the Fund in this case. The Division pointedly contends the Board lacks any legal authority to apply the "alter ego doctrine" as an equitable remedy to disregard the corporate status of Legend Builders, Inc. and award Claimant any recovery from the Fund under these circumstances.

\$38-11-204(3) provides:

To recover from the fund . . . a qualified beneficiary shall establish that:

. . . .  
(c) the owner has paid in full  
the original contractor licensed or  
exempt from licensure under Title  
58, Chapter 55, Utah Construction  
Trades Licensing Act, . . . with

whom the owner has a written  
contract . . . . (Emphasis added).

§38-11-204(3)(c) clearly requires a qualified beneficiary must establish that the owner had a written contract with an original contractor who was either licensed or exempt from licensure as a requirement to any possible recovery from the Fund.

This Board has acknowledged it lacks any authority to disregard the statutory requirements which undisputably govern possible recovery from the Fund. In re Anderson Lumber Company (Claim No. LRF-1999-0801-01, issued May 3, 2000). This Board has also concluded any recovery from the Fund is a statutorily created remedy which necessarily requires every claimant establish that they are duly qualified to obtain such payment. In re Ryan (Claim No. LRF-1999-0630-01, issued November 5, 1999).

Utah courts have generally recognized a corporation is usually regarded "as a separate and distinct legal entity from its stockholders." Dockstader v. Walker, 29 Utah 2d 370, 510 P.2d 526, 528 (1973). The foregoing is true whether the corporation has one or multiple stockholders. See Colman v. Colman, 743 P.2d 782, 786 (Utah App. 1987).

The Board notes the alter ego doctrine has "historically . . . been applied to corporations" as an "equitable doctrine which allows courts the discretion to disregard a corporate entity and hold individuals responsible for acts done in the name of a corporation". (Emphasis in original). Werner-Jacobsen v.

Bednarik, 946 P.2d 744, 747-48 (1997). See also Black's Law Dictionary, 77-78 (6th Ed. 1990). The Colman Court further stated:

The rationale used by courts in permitting the corporate veil to be pierced is that if a principal shareholder or owner conducts his private and corporate business on an interchangeable or joint basis as if they were one, he is without standing to complain when an injured party does the same. Id.

Essentially, a "court of equity looks through form to substance and has often disregarded the corporate form when it was fiction in fact and deed and was merely serving the personal use and convenience of the owner." Lyons v. Lyons, 340 So.2d 450, 451 (Ala.Civ.App. 1976). However, Utah courts have also recognized it is necessary to "balance piercing and insulating policies" and courts "will only reluctantly and cautiously pierce the corporate veil". Salt Lake City Corp. v. James Constructors, Inc., 761 P.2d 42, 46 (Utah App. 1988); Colman v. Colman, supra.

Based on the substantial evidence and the reasonable inferences drawn therefrom, the Board finds and concludes Legend Builders, Inc. was under capitalized as a one-man corporation. The Board duly notes Mr. Mower initiated a personal bankruptcy proceeding after the contract in question was performed and Legend Builders, Inc. accordingly ceased doing business by reason of that bankruptcy.

Further, both Claimant and the homeowners contracted with



Legend Builders, Inc. in the good faith belief that Mr. Mower - the owner, president and sole shareholder of that corporation - was a licensed contractor and the corporate entity was thus authorized to provide construction services. Moreover, the residence in question was constructed by a licensed contractor, albeit under the aegis of a non-licensed corporate entity.

Given the foregoing, the Board duly acknowledges Claimant's urgency that it would be wholly inappropriate to elevate form over substance and merely disregard the fact that Mr. Mower was a licensed contractor. The homeowners may have been adequately protected by reason of that licensure. Strict observance of the corporate form of Legend Builders, Inc. to bar recovery by Claimant - simply because only Mr. Mower was a licensed entity and he did not enter the contract in his individual capacity - arguably promotes a serious injustice and an inequitable result.

Nevertheless, the contract between Legend Builders, Inc. and the homeowners unambiguously recites that it is Legend Builders, Inc. - not Mr. Mower in his individual capacity - who contracted with the homeowners to build the residence in question.

Notwithstanding the parol evidence which was both offered and received without objection during the hearing before the Board, the contract under review is neither ambiguous nor incomplete as to the identity of the contracting parties. Accordingly, there is no proper basis to find and conclude that the homeowners

contracted with a licensed contractor for purposes of the construction project in question.

Moreover, a statutorily-created state agency "has only those powers expressly or impliedly granted to it by the legislature" and such an agency has no authority to exercise equitable powers as would a court of general jurisdiction. Bevans v. Industrial Commission, 790 P.2d 573, 576 (Utah App. 1990). The Bevans Court emphasized a state agency is not free to "exercise power not expressly or impliedly granted it by the legislature, even in the name of fairness". Id. at 578.

Accordingly, this Board and the Division lacks the authority to apply the alter ego doctrine in this proceeding as to possibly prompt any payment from the Fund. The Board acknowledges it applied the alter ego doctrine to prompt recovery from the Fund in a prior case. See L.K.L. Associates, Inc. (Claim No. LRF-1997-0124-01, issued December 3, 1997). This Board in that case rejected the Division's urgence that the claimant was barred from recovery from the Fund simply because the original contractor had not been licensed.

Rather, the Board ultimately concluded the claimant in that case was a qualified beneficiary entitled to payment under its contract with the original contractor and his "alter ego" corporate identity, even though the original contractor was not personally licensed to provide construction services. The Board

duly acknowledges the L.K.L. Associates case represents a decision, made by this Board and adopted by the Division, that the alter ego doctrine is applicable - when sufficiently established by the facts presented - as to warrant recovery from the Fund.

Nevertheless, the order issued in the L.K.L. Associates case does not reflect that the Division had argued this Board lacked the authority to apply the alter ego theory as an equitable doctrine in that case and the Board had rejected any such assertion. Simply put, the restricted scope of this Board's authority was not an issue squarely presented and addressed in the L.K.L. Associates case, even though the Board and the Division applied the alter ego theory to award payment from the Fund in that proceeding.

Generally, the holding of an agency adjudication, or the application of a rule of law to the facts in a prior case, binds the agency in subsequent decisions. Steiner Corp. v. Auditing Division of the Utah State Tax Commission, 979 P.2d 357, 361 (Utah 1999). Despite that mandate, the Utah Supreme Court has also stated:

. . . rules of law established by adjudication apply to the future conduct of all persons subject to the jurisdiction of an administrative agency, unless and until expressly altered by statute, rule, or agency decision. That does not mean, however, that a rule of law established in adjudication can never be changed by the

agency that established it. Administrative agencies must, and do, have the power to overrule a prior decision when there is a reasonable basis for doing so. As this Court stated in Reaveley v. Public Service Commission, 20 Utah 2d 237, 241, 436 P.2d 797, 800 (1968), "Certainly an administrative agency which has a duty to protect the public interest ought not to be precluded from improving its collective mind should it find that a prior decision is not now in accordance with its present idea of what the public interest requires."

Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph Company, 846 P.2d, 1245, 1253 (Utah 1992).


Thus, this Board concludes it lacks the authority to apply an equitable doctrine - such as the alter ego theory - in this case. This Board also necessarily overrules anything to the contrary in the L.K.L. Associates decision. Claimant may understandably assail the harsh results occasioned by this Board's due regard for its limited authority under the facts as presented in this proceeding. However, the order entered in this proceeding is subject to either administrative or judicial review. Moreover, any relief from an inequitable outcome in a subsequent case with identical facts is a matter more properly left for possible legislative action.

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Claimant has not established that the homeowners had a contract with a licensed original contractor as to obtain payment from the Fund in this case. Accordingly,

Claimant's request for such payment is denied, consistent with the views expressed herein.

On behalf of the Residence Lien Recovery Fund Advisory Board, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order were submitted to A. Gary Bowen, Director of the Division of Occupational and Professional Licensing on the 27<sup>th</sup> day of November, 2000 for his review and action.

  
J. Steven Eklund  
Administrative Law Judge

**MAILING CERTIFICATE**

I hereby certify that on the 27 day of November, 2000,  
a true and correct copy of the foregoing FINDINGS OF FACT,  
CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER was sent first  
class mail, postage prepaid, to the following:

J. Steven Eklund  
Administrative Law Judge (hand delivered)

Tony R. Patterson  
Assistant Attorney General  
Consumer Rights Division - hand delivered  
PO Box 140872  
Salt Lake City UT 84114-0872

Scott B. Mitchell  
2469 East 7000 South Ste 204  
Salt Lake City UT 84121

Joseph R. Goodman  
10885 South State  
Sandy UT 84070

Carroll Englemund

BEFORE THE DIVISION OF OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

-o0o-

IN THE MATTER OF THE LIEN	)	
RECOVERY FUND CLAIM OF	)	
NATHAN GOODRICH, DBA	)	
BEDROCK MASONRY, REGARDING	)	No. LRF-1999-1210-01
THE CONSTRUCTION BY LEGEND	)	
BUILDERS, INC., ON THE	)	Adjudicative hearing
RESIDENCE OF DAVID AND	)	
CAROL CISE.	)	Judge Steven Eklund
	)	
-----	)	

-o0o-

BE IT REMEMBERED THAT on the 19th day of April, 2000, an adjudicative hearing before Judge J. Steven Eklund was held in the above-entitled action now pending before the above-named tribunal, and was taken before Kathy H. Morgan, a Certified Court Reporter and Notary Public in and for the States of Utah and Nevada, commencing at the hour of 9:00 a.m. of said day, at the Heber M. Wells Building, 160 East 300 South, Room 451, City of Salt Lake, State of Utah.

That said hearing was held pursuant to Notice.

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**A P P E A R A N C E S**

Members of the Board  
Present:

Clint Techmeyer, Chair  
Grant Weller  
Steven Bankhead  
Robert Burton  
Robert Arbuckle  
Roy Jensen

Representing the  
Claimant:

**SCOTT B. MITCHELL**  
ATTORNEY AT LAW  
2469 East 7000 South  
Suite 204  
Salt Lake City, Utah 84121

Representing the  
Permissive Party:

**JOSEPH R. GOODMAN**  
NELSON, SNUFFER & DAHLE  
10885 South State Street  
Sandy, Utah 84070

Representing the  
Division:

**TONY R. PATTERSON**  
**WILLIAM EARL WEBSTER**  
ASSISTANT ATTORNEYS GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
160 East 300 South  
Fifth Floor  
Salt Lake City, Utah 84114

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1 APRIL 19, 2000- 9:00 A.M.- SALT LAKE CITY, UTAH

2

3

P R O C E E D I N G S

4

5 THE COURT: On the record. This is the  
6 time and place set for hearing in the matter of the  
7 Lien Recovery Fund claim of Nathan Goodrich doing  
8 business as Bedrock Masonry regarding the construction  
9 by Legend Builders, Incorporated on the residence of  
10 David and Carol-- is it "Ceese"?

11 MR. CISE: Cise.

12 THE COURT: Cise, thank you. The Claimant  
13 in this proceeding, Nathan Goodrich, is present and  
14 represented by counsel, Scott B. Mitchell. The  
15 permissive party in this case, Legend Builders  
16 Incorporated, is present and represented by Joseph R.  
17 Goodman. The Division of Occupational and  
18 Professional Licensing is represented by Tony R.  
19 Patterson, Assistant Attorney General, State of Utah.

20 Six members of the Residence Lien Recovery  
21 Fund Board are present for this proceeding: The Chair  
22 of the Board, Clint Techmeyer, Grant Weller, Steven  
23 Bankhead, Robert Burton, Robert Arbuckle and Roy  
24 Jensen. The Division Director, Gary Bowen, is not  
25 with us.

1           Prior to the commencement of the hearing  
2     the Court has reviewed potential exhibits with  
3     respective counsel for the parties and has provided  
4     copies of those exhibits to the Board. Mr. Patterson,  
5     for identification purposes, Exhibit 1 would be the  
6     January 15th, 1998 proposal from Legend Builders.  
7     Mr. Mitchell, I don't believe there's any objection to  
8     receiving that in evidence subject to foundational  
9     testimony.

10           MR. MITCHELL: That's correct, your Honor.

11           THE COURT: Very well, received as  
12     identified. Exhibit Number 2 is the construction  
13     agreement, a two-page document dated January 15th,  
14     1998. Any objection, Mr. Mitchell, to that?

15           MR. MITCHELL: None, your Honor.

16           THE COURT: It will be so identified. And  
17     while it is not an exhibit, the Board has instructed  
18     that the January 12th, 2000 letter from Michael Mower  
19     to Earl Webster constitutes Mr. Mower's response  
20     in this proceeding. It is not evidentiary in nature,  
21     but it is a pleading and properly before you as part  
22     of this record.

23           Mr. Patterson, do you have an opening  
24     statement on behalf of the Division?

25           MR. PATTERSON: Yes, your Honor.

1           This claim comes before the Board, and as  
2 of the Division has reviewed the claim, it is the  
3 Division's opinion that all of the criteria necessary  
4 to be established for the claim to be paid has been  
5 met except for one. That one issue is whether or not  
6 the homeowner entered into a written contract with a  
7 licensed contractor. That will be the factual issue  
8 that the Board will need to decide today.

9           Now, in this claim there have been  
10 qualified services filed with the application in the  
11 amount of \$3,950. That's for qualified services. It  
12 is my understanding that there will be some testimony  
13 presented today by the permissive party, the  
14 contractor, that will dispute that amount. But the  
15 Division has received invoices from the Claimant that  
16 would justify that amount. The claim also requested  
17 \$1,365 for attorneys' fees. Based upon our rule, the  
18 Division reduced that amount to \$987.50 The State  
19 would -- or the Division would stipulate to that  
20 amount. The amount of costs requested is \$100. The  
21 amount in documentation that has been received is  
22 \$95.16. The amount of interest that was requested  
23 with the claim application is \$335.74.

24           The Division, in calculating interest up  
25 through hearing, came up with the figure, which we're

1 willing to stipulate to, of \$433.74. The total of the  
2 qualified services, the attorneys' fees, the costs and  
3 interest is 4,000 -- excuse me -- \$5,466.40. So  
4 we'll have to wait for the evidence that is received  
5 on the amount of qualified services for the  
6 verification of that, whether or not the Claimant has  
7 already been compensated for that.

8 The issues that will be presented will be  
9 limited to that amount and to whether or not the  
10 homeowner entered into a written contract with a  
11 licensed contractor. It is the Division's position  
12 that that did not occur, and therefore the Division is  
13 requesting that this claim be denied.

14 Thank you, your Honor.

15 THE COURT: Mr. Mitchell, an opening  
16 statement on behalf of the Claimant?

17 MR. MITCHELL: Briefly, your Honor.

18 There's no dispute in this case that  
19 Legend Builders, Inc. was a party to the contract at  
20 issue and was not licensed. There's no dispute that  
21 Mr. Mower was the licensed contractor and wasn't a  
22 party to the contract. I think the evidence will be  
23 that Mr. Mower was the sole shareholder of Legend  
24 Builders, Inc., and that all of the parties understood  
25 that Legend Builders, Inc. was properly performing

1 this contract, and that nobody was aware of the fact  
2 that Mr. Mower as the contracting party -- I mean the  
3 licensed contractor -- affected the validity of the  
4 contract or had made it otherwise improper.

5 The fact that Mr. Mower was the licensed  
6 party confused at least two attorneys, myself  
7 included, and I'll just tell you briefly how that  
8 happened. Mr. Goodrich filed a lawsuit against Legend  
9 Builders seeking to collect the amount due. We also  
10 -- he also filed a mechanic's lien against the  
11 property, and we sought to foreclose that and we sued  
12 Mr. Cise as well to foreclose that lien. After we  
13 served Mr. Cise with a summons and complaint, we got a  
14 letter from Mr. Cise's attorney that told us that we  
15 can't sue Mr. Cise because he's qualified under the  
16 lien recovery statutes for protection, and they sent  
17 us a copy of Mr. Mower's license and the other  
18 documentation showing or purporting to show that  
19 Mr. Cise was covered by the recovery fund. And so we  
20 have dismissed our lawsuit against Mr. Cise, the  
21 owner. He's an innocent owner, and he's the one who's  
22 going to be left holding the bag if we're not  
23 successful here today.

24 And so we dismissed our complaint against  
25 Mr. Mower -- Mr. Cise, and went after Mr. Mower. The

1 Court -- we filed it in bankruptcy court and the  
2 bankruptcy court later told us that it didn't believe  
3 it had jurisdiction and dismissed our complaint.  
4 Before we refiled the complaint over in state court,  
5 or before we were able to, Mr. Mower filed his own  
6 personal Chapter 7 bankruptcy, and since he's the only  
7 person involved in Legend Builders, Legend Builders  
8 was nothing at that point. We did not sue him, or we  
9 were not able to sue him or seek recovery from him.  
10 So we filed the application with the Lien Recovery  
11 Fund.

12 So the question that we're going to be  
13 asking you is really an equitable question, whether  
14 the technicality that Legend Builders, Inc. was not  
15 licensed when its sole shareholder-owner was the only  
16 person involved with it was licensed, should prevent  
17 us from recovering from the Lien Recovery Fund.  
18 That's a question you'll be able to decide, and we're  
19 just going to present you with the evidence.

20 THE COURT: Mr. Goodman, any statement on  
21 behalf of Legend Builders?

22 MR. GOODMAN: Briefly, your Honor.

23 I think the facts as presented are  
24 accurate, and the only issue Mr. Mower would dispute  
25 at this point is the valuation issue. The agreement

1 with Mr. Goodrich was to provide cultured stone at \$11  
2 a square foot. Subsequent to that agreement, Mr.  
3 Goodrich stated that he would provide natural stone  
4 based on the same contract at the same rate. There  
5 was no modification, no change in the terms of that  
6 agreement. And we think -- we believe he's seeking to  
7 recover additional monies to which he's not entitled,  
8 and that he should be only allowed to recover what he  
9 originally contracted for, \$11 per square foot. The  
10 licensing issue will be presented as already argued by  
11 previously counsel, but the valuation issue we'd have  
12 some dispute with.

13 THE COURT: Counsel and the Court have  
14 reviewed prior to the commencement of the hearing the  
15 sequence of testimony in this matter, and given that  
16 the preeminent issue as to whether this claim ought to  
17 be granted or not involves the licensure issue,  
18 licensure status of the corporation, vis-a-vis Mr.  
19 Mower, it was agreed upon that initial testimony  
20 should be presented to the Board to clarify for the  
21 Board the factual relationship that exists between  
22 those two entities in terms of that licensure issue.

23 Under those circumstances, Mr. Goodman, I  
24 think it might be most appropriate, then, if Mr. Mower  
25 would be the first witness, and perhaps you can direct



1 the initial questions to him to clarify that for the  
2 Board, if that's all right.

3 Mr. Mower, could I ask you to come up  
4 here, please.

5 Would you raise your right hand.

6 (The witness was sworn.)

7 Please be seated. Mr. Goodman?

8 DIRECT EXAMINATION

9 BY MR. GOODMAN:

10 Q. Would you state your full name for the  
11 record, Mr. Mower.

12 A. Michael Allen Mower.

13 Q. What's your current address?

14 A. 1639 East Heatherwood Circle.

15 Q. And you were the owner of Legend Builders  
16 Incorporated, correct?

17 A. Correct.

18 Q. Were you the only shareholder of that  
19 corporation?

20 A. I was.

21 Q. Were you an officer of that corporation?

22 A. Yes.

23 Q. Did you make all decisions regarding the  
24 business of Legend Builders?

25 A. I did.

1           Q.       Was Legend Builders, at the time you  
2       contracted with David Cise to build his home, was  
3       Legend Builders Incorporated a licensed contractor in  
4       the State of Utah?

5           A.       It was not.

6           Q.       Were you personally a licensed contractor  
7       in the State of Utah?

8           A.       Yes, I was.

9           Q.       Are you a licensed contractor now?

10          A.       I've not renewed yet.

11          Q.       Is Legend Builders currently in business?

12          A.       No.

13                   MR. GOODMAN: No further questions. I  
14       reserve the right to continue.

15                   THE COURT: Certainly. Mr. Mitchell, any  
16       questions?

17                               CROSS-EXAMINATION

18       BY MR. MITCHELL:

19          Q.       Mr. Mower, who were the other officers? I  
20       assume you were an officer of Legend Builders?

21          A.       Uh-huh (affirmative).

22          Q.       What was your capacity?

23          A.       President.

24          Q.       Were there other officers?

25          A.       Not at that point.

1 Q. When was Legend Builders formed?  
2 Incorporated.

3 A. January of '98, I believe.

4 Q. After you incorporated, did you ever hold  
5 any annual meetings?

6 A. No.

7 Q. Did you ever hold any shareholders  
8 meetings?

9 A. No.

10 Q. Did you ever hold any directors meetings?

11 A. No.

12 Q. Did you ever elect directors?

13 A. No.

14 Q. Did you ever elect officers?

15 A. No.

16 Q. Did you keep books and records, corporate  
17 minute books and record?

18 A. No.

19 MR. GOODMAN: Nothing further, your Honor.

20 THE COURT: Mr. Patterson?

21 CROSS-EXAMINATION

22 BY MR. PATTERSON:

23 Q. Mr. Mower, isn't it correct that Legend  
24 Builders, Inc. actually is a corporation that had  
25 changed its name and that it was originally Michael

1 Mower, Inc.?

2 A. Michael Mower Construction, Inc.

3 Q. Michael Mower Construction. And when  
4 was Michael Mower Construction, Inc. first  
5 incorporated?

6 A. I think the year before, January of '97.  
7 I'm not exactly sure.

8 Q. Isn't it true that it would be more like  
9 '94 when it was incorporated, and the corporate  
10 change took place in '97?

11 A. I'd have to look at the records.  
12 Initially I opened the company as Michael Mower  
13 Construction. Then I changed it to Michael Mower  
14 Construction Incorporated, and I don't know what the  
15 dates were.

16 Q. Isn't it true that contracts that you  
17 entered into --

18 (Discussion held off the record.)

19 MR. PATTERSON: No further questions, your  
20 Honor.

21 THE COURT: Mr. Goodman, anything further  
22 for this witness?

23 MR. GOODMAN: No, your Honor.

24 THE COURT: Mr. Mitchell?  
25

## RECROSS-EXAMINATION

BY MR. MITCHELL:

Q. Mr. Mower, if I were to ask you the same questions about shareholders meetings, directors meetings, annual meetings, minute books, things like that with respect to Michael Mower, Inc., would they be different than with respect to Legend Builders, Inc.?

A. They would.

Q. Tell us about that.

A. I had a Vice-President for Michael Mower Construction.

Q. Who was the Vice-President for Michael Mower Construction?

A. Michael Roberts.

Q. Did you have annual shareholders meetings?

A. No.

Q. Did you have directors meetings?

A. No.

Q. When you entered into a contract or did business, did you vote? Did you have any votes of directors?

A. No.

Q. Did you elect officers?

A. There wasn't an election. There was an

1 agreement on employment.

2 Q. Did you have corporate minute books?

3 A. No.

4 Q. Did you keep any kind of corporate records  
5 at all?

6 A. Yeah, I kept records.

7 Q. What kind of records did you keep?

8 A. We have Articles of Incorporation and the  
9 stuff we had to file to become incorporated.

10 Q. After the initial incorporation, did you  
11 keep any other records? Did you make any resolutions?  
12 Did you have any formal meeting records, anything like  
13 that?

14 A. Nothing formal.

15 MR. MITCHELL: Okay. Nothing further,  
16 your Honor.

17 THE COURT: Mr. Goodman?

18 MR. GOODMAN: Nothing further, your  
19 Honor.

20 THE COURT: Mr. Patterson?

21 MR. PATTERSON: Nothing, your Honor.

22 THE COURT: Any questions by the Board of  
23 this witness? Mr. Techmeyer?

24 MR. TECHMEYER: I'll pass right now.

25 THE COURT: Mr. Weller?

1 MR. WELLER: No, not at this time.

2 THE COURT: Mr. Arbuckle?

3 MR. ARBUCKLE: No.

4 THE COURT: Mr. Jensen?

5 MR. JENSEN: Yes, I have one. Mr. Mower,  
6 were you aware that when you became incorporated as  
7 Legend Builders that it was a violation of state law  
8 not to also have your licensure status changed?

9 THE WITNESS: No.

10 THE COURT: Mr. Burton?

11 MR. BURTON: When you entered into the  
12 contract with the homeowner, did you think that the  
13 license that you held covered Legend Builders?

14 THE WITNESS: I did.

15 MR. TECHMEYER: What was his response?

16 THE COURT: He said he did.

17 MR. BURTON: I had another question that  
18 was brought up in opening statements on the  
19 bankruptcies that were filed. Were there two  
20 bankruptcies or one?

21 THE WITNESS: I filed my -- I filed one  
22 bankruptcy is all.

23 MR. BURTON: And that was on behalf of  
24 yourself personally?

25 THE WITNESS: Yes.

1 MR. BURTON: Did you ever file a  
2 bankruptcy on behalf of Legend Builders, Inc.?

3 THE WITNESS: We just closed the company.

4 MR. BURTON: The company has no assets?

5 THE WITNESS: Correct.

6 MR. BURTON: Thanks.

7 THE COURT: Mr. Bankhead?

8 MR. BANKHEAD: I have two questions. Why  
9 did you change the entity from Michael Mower as  
10 proprietor to Michael Mower Construction, Inc.? When  
11 did that occur and what was your purpose?

12 THE WITNESS: I was advised that it would  
13 be -- as a construction company that it would be  
14 better off as a corporation.

15 MR. BANKHEAD: And why did you change the  
16 name to Legend Builders?

17 THE WITNESS: I was anticipating going  
18 further with Michael Roberts as a shareholder and was  
19 going to change the company name so it was not just  
20 representative of me. But that didn't happen.

21 MR. BANKHEAD: And was that -- did you  
22 file new Articles of Incorporation or was that a name  
23 change only?

24 THE WITNESS: I think it was just a name  
25 change only.



1 MR. BANKHEAD: No further questions.

2 THE COURT: Any other questions by the  
3 Board? Yes, Mr. Arbuckle?

4 MR. ARBUCKLE: Can I ask about the rock  
5 pricing? You said that it was \$11 a square foot for  
6 rock originally. Was that based on natural rock or  
7 cultured rock?

8 THE WITNESS: That was based on cultured.

9 MR. ARBUCKLE: Then the subcontractor,  
10 what kind of arrangement did -- he said he would do  
11 natural rock for the same price?

12 THE WITNESS: Yes.

13 MR. ARBUCKLE: What kind of natural rock?

14 THE WITNESS: Same style. It was a  
15 riverbed cobble.

16 MR. ARBUCKLE: And that's not -- that \$11  
17 a square foot is not too low for that?

18 THE WITNESS: It's lower than normal,  
19 yeah.

20 MR. ARBUCKLE: What would be a normal  
21 price?

22 THE WITNESS: Probably around \$15 to \$17,  
23 depending on what you use.

24 MR. ARBUCKLE: And the job was performed?

25 THE WITNESS: Correct.

1 MR. ARBUCKLE: And you were happy with  
2 it?

3 THE WITNESS: I was happy with the end  
4 result, yes.

5 MR. ARBUCKLE: And you paid \$2,500 up  
6 front?

7 THE WITNESS: Yes.

8 MR. ARBUCKLE: And the total contract, I  
9 don't know how many square feet there was. There was  
10 supposed to be 2,600 square feet. \$3,900 was supposed  
11 to be the total?

12 THE COURT: Mr. Mower, do you know what  
13 the square footage was for that?

14 THE WITNESS: I forget. He had it on his  
15 invoice.

16 MR. ARBUCKLE: So there was an invoice for  
17 \$14, and you said no, it was \$11?

18 THE WITNESS: That's right.

19 THE COURT: Any other questions? Mr.  
20 Techmeyer?

21 MR. TECHMEYER: Just following that same  
22 vein just for clarification, what was the reason or  
23 motivation to replace the cultured rock with natural  
24 if it would have a higher price? Was there a change  
25 order, anything signed, or was this just a verbal

1 agreement that you had?

2 THE WITNESS: It was a verbal agreement.  
3 The initial \$2,500 was paid to Bedrock Masonry as a  
4 down payment for the materials, and the materials  
5 could be ordered through the supplier and delivered to  
6 the job. If my memory serves me right, that was in  
7 July, and months later we still hadn't received the  
8 rock. Nathan Goodrich repeatedly told me that  
9 although he had paid the money to the vendor, they  
10 were just bringing in small partial shipments of what  
11 we needed, so he wasn't going to have it sent up to  
12 the job until he had a full order.

13 And that was the story for months, and  
14 then finally he said, because it had taken so long, he  
15 said why don't I just do the natural stone, and we'll  
16 just do it for the same price. And I said well, I'll  
17 approve it with the customer, and if it's okay with  
18 him it's okay with me. And the natural stone is what  
19 the customer wanted originally anyway, but we cut back  
20 because it was more expensive. So he said let's go  
21 ahead with that. So it was basically -- I felt it was  
22 a time issue, and the subcontractor feeling pressure  
23 because it was taking so long.

24 It's important to note, I think, that  
25 later, checking with the supplier, the supplier was

1 never given the \$2,500 as a down payment toward  
2 materials.

3 THE COURT: Anything else? Any other  
4 questions by the Board of this witness?

5 Mr. Goodman, anything further for Mr.  
6 Mower?

7 MR. GOODMAN: Nothing further, your Honor.

8 THE COURT: Mr. Mitchell?

9 MR. MITCHELL: Nothing further, your  
10 Honor.

11 THE COURT: Mr. Patterson?

12 MR. PATTERSON: Yes. I believe we've  
13 gotten into this issue and I would like to explore it  
14 a little bit further, if that would be all right.  
15 It's my understanding that -- well, your Honor, may I  
16 approach the witness with a document?

17 THE COURT: Go ahead.

18 RECROSS-EXAMINATION

19 BY MR. PATTERSON:

20 Q. Would you please review this, Mr. Mower?

21 MR. PATTERSON: May I approach, your  
22 Honor?

23 THE COURT: Yes.

24 BY MR. PATTERSON:

25 Q. Do you recognize this document?

1           A.       I do.

2           Q.       Could you please explain what it is?

3           A.       It's an invoice from Bedrock Masonry.

4           Q.       To?

5           A.       To Legend Builders.

6           Q.       Did you receive this?

7           A.       I did.

8           Q.       And what was the purpose for this invoice?

9           A.       It was a final invoice for the work done

10          on the job.

11          Q.       And does it identify the particular client

12          that you were referring to?

13          A.       The vendor, Bedrock Masonry?

14          Q.       No, the homeowner, David Cise.

15          A.       It does.

16          Q.       Does it identify how many square feet of

17          rock?

18          A.       Yes.

19          Q.       And that is 450 feet?

20          A.       Yes, that's what it says, yes.

21          Q.       And you notice they billed it at \$14 per

22          square foot?

23          A.       I do.

24          Q.       Did you discuss that with Bedrock Masonry

25          when you received this invoice?

1           A.        I did.

2           Q.        And what did you inform Bedrock?

3           A.        That our agreement was \$11 a square foot.

4           Q.        What was the response you received?

5           A.        I don't think I ever got a response back.

6       My communication with Nathan at that point was through

7       letters.

8           Q.        Through who?

9           A.        Letters.

10          Q.        Letters? What was represented to you in

11       the letters?

12          A.        I never received a letter back.

13          Q.        You just wrote letters to Bedrock and

14       never received any response?

15          A.        Right.

16          Q.        Do you believe that this bill has been

17       paid in full, or is it your opinion that this has been

18       paid in full?

19          A.        I believe the amounts are inaccurate. If

20       the amounts were accurate it would be paid in full.

21          Q.        What is inaccurate about it?

22          A.        The \$14 per square foot.

23          Q.        As far as the steel and draw, you agree

24       with everything else?

25          A.        Well, I wouldn't have expected an extra

1 fee for steel. I mean, normally when you get a bid  
2 for masonry, they include the steel for poles or  
3 whatever. It's not an extra cost.

4 Q. So if it was billed at \$11 per square  
5 foot, what is your basis for your opinion that the  
6 invoice was paid in full?

7 A. The initial draw of \$2,500, and then  
8 services that I provided to Bedrock Masonry for the  
9 balance.

10 Q. Under what conditions did you provide  
11 those services?

12 A. I worked with Nathan Goodrich installing  
13 stone on a couple of different properties.

14 Q. Did you work as an independent contractor  
15 or an as employee?

16 A. As an employee.

17 Q. And in employment are you saying that you  
18 were underpaid or not paid for your services?

19 A. Not fully paid.

20 Q. Not fully paid? What dates were you  
21 employed by Bedrock Masonry?

22 A. I'm going to have to be guessing. It was  
23 September through October.

24 Q. Of which year?

25 A. '98.

1 Q. '98. And during that time period, in the  
2 past have you calculated approximately what amount  
3 that you believe you were not paid?

4 A. Yeah, verbally on the phone with Nathan.

5 Q. What is that amount?

6 A. The total amount was 38, 38-something.

7 I've got notes on that.

8 Q. \$3,800?

9 A. Yes, minus the \$500 payment, plus a \$300  
10 loan. I think the total, the balance owed was \$2,880.

11 Q. \$2,800. Do you recall specifically the  
12 amounts that you were paid by Bedrock while you were  
13 employed with them?

14 A. As I recall, \$500.

15 Q. That was the total payments received?

16 A. (The witness nodded.)

17 Q. Was it understood between you and Bedrock  
18 Masonry that you were working to pay this invoice? Is  
19 that the conditions of your compensation?

20 A. No.

21 Q. How is it that you believe that those  
22 funds that -- or the money you believe you were  
23 entitled to for your employment should offset this  
24 particular invoice?

25 A. I have to -- initially when I went to work



1 with Bedrock it was as an employee. I think, however,  
2 when things fell apart I think he ended up sending me  
3 a 1099 as a contractor instead of an employee. I'd  
4 have to look at my records to find out about that.  
5 But how I justified it? Was that your question?

6 Q. Yes.

7 A. Well, my justification is if someone owes  
8 you money and you owe them money, that you would take  
9 the two and if there was a balance left over, then you  
10 would pay for the balance left over. If there was a  
11 credit, then they'd still be owing you money.

12 Q. You said you received a 1099 at the end of  
13 the year?

14 A. Seems like it. I don't think it was a  
15 W-2.

16 Q. Why or what are -- when you first entered  
17 into your employment relationship with Bedrock  
18 Masonry, did you have a specific conversation  
19 regarding your status as an employee versus a  
20 subcontractor?

21 A. Yeah. It was actually more -- when I  
22 started working with Nathan it was -- his phrase was  
23 "a partner without being a partner." Nathan one day  
24 told me that he needed or he was looking for someone  
25 to help him with his work, and he couldn't keep up

1 with the amount of work that he had and it was hard to  
2 find good help. And I was thinking at that time of  
3 getting out of general contracting. And so we started  
4 discussing it and we decided to give it a try to see  
5 how it would go.

6 Things didn't pan out. He didn't get what  
7 he expected from me and I didn't get what I expected  
8 from him, so that we didn't stay together very long.  
9 But I was -- he was going to pay me \$7 a square foot  
10 for what I installed, then for the -- when I picked up  
11 a lot of rook and stuff like that, his discussions  
12 were that you can easily make \$50 an hour while you're  
13 doing this work.

14 Q. Did you ever receive an explanation from  
15 Bedrock as to why you received a 1099 rather than a  
16 W-2?

17 A. I didn't.

18 Q. When you received your check, you said you  
19 received a \$500 check; is that correct?

20 A. While we were working?

21 Q. Yes. That was for wages?

22 A. It was for compensation. I don't know  
23 whether I'd call it wages or, you know, whatever it  
24 was. It was for work that I did.

25 Q. And did it have any withholding taxes?

1 Was there anything else like that, you know, those  
2 factors that would indicate that you were an employee?

3 A. No.

4 Q. Did you question that at that time?

5 A. No.

6 Q. Do you still feel that you were working as  
7 an employee for Bedrock Masonry, or do you believe it  
8 was as an independent contractor?

9 A. Well, my intention to go to work for him  
10 was -- would have been as a partner so that profits  
11 that were made with the company were shared.

12 Q. Did you receive any profits?

13 A. No.

14 Q. Did you participate in the business  
15 decisions of Bedrock Masonry?

16 A. It was -- that was the initial idea. That  
17 was one of the reasons why I became frustrated.

18 Q. Did you ever participate in those  
19 decisions?

20 A. I participated, but, you know, my  
21 participation was largely ignored.

22 Q. Did you obtain any ownership of the  
23 company?

24 A. No.

25 Q. Did you purchase stock or sign a contract

1 to pay for it?

2 A. No.

3 Q. Did you pay anything for ownership  
4 interest in the company?

5 A. No.

6 MR. PATTERSON: Thank you, your Honor.

7 THE COURT: Mr. Goodman, any questions?

8 MR. GOODMAN: I think all the testimony  
9 from my client has been elicited, your Honor.

10 THE COURT: Mr. Mitchell?

11 RECROSS-EXAMINATION

12 BY MR. MITCHELL:

13 Q. I'm a little confused. Were you going to  
14 be a partner with Mr. Goodrich, or were you going to  
15 be an employee, or how was that to work?

16 A. It was his -- I was not going to go to  
17 work for a company as an employee that didn't benefit  
18 from my contribution to the company. So my word for  
19 it would be a partner, a shareholder, someone who  
20 would benefit from the -- from my contribution. His  
21 wording was "a partner but not a partner."

22 Q. What did that mean?

23 A. That meant that he had had bad experiences  
24 with partners in the past and so he didn't want to --  
25 he didn't want to call it a partnership, but it was

1 really a partnership.

2 Q. So what made you think you were going to  
3 be an employee?

4 A. I never thought of it as an employee. At  
5 the end of the thing Nathan was mad, and so it's hard  
6 to -- that's what I mean. I was confused on how it  
7 was going to be.

8 Q. Well, let me ask you this: You had  
9 employees for Legend Builders; is that correct?

10 A. That's correct.

11 Q. And you had employees for Michael Mower,  
12 Inc.; is that correct?

13 A. That's correct.

14 Q. Have you had employees for other  
15 businesses that you've owned?

16 A. When I was Michael Mower Construction.

17 Q. Now, when you have employees, you have  
18 them do things like fill out W-4s when they first  
19 start working for you, and then you take money out of  
20 their paychecks at the end of the year and give them  
21 W-2s; is that correct?

22 A. That's correct.

23 Q. You weren't surprised in this case when  
24 you got that 1099 at the end of the year, were you?

25 A. Not overly surprised.

1 Q. You didn't expect to get a W-2, did you?

2 A. I wasn't expecting one way or the other.  
3 I didn't know how he was going to handle it. Actually  
4 I was surprised only that I received something.

5 Q. Now, I'm a little confused as to you think  
6 that if the numbers were proper on this invoice, in  
7 other words, if the \$11 per square foot was right,  
8 that Mr. Goodrich would have been paid; is that  
9 correct?

10 A. Compensated.

11 Q. Okay, compensated. In full?

12 A. Uh-huh (affirmative).

13 Q. Now, tell us about that. Now, you paid  
14 \$2,500; is that right?

15 A. Correct.

16 Q. Did you pay anything else?

17 A. No. I did work for Nathan.

18 Q. What did you do?

19 A. I did work for Nathan.

20 Q. And did you have some kind of agreement  
21 with Nathan with respect to that work that would go  
22 towards this invoice?

23 A. No.

24 Q. Now, isn't it true that Mr. Goodrich sent  
25 you this invoice, or one like it, on various occasions

1 but you just ignored it?

2 A. Yes, it is.

3 Q. And isn't it true that I sent you a letter  
4 in February of last year demanding payment for this  
5 invoice and interest that you ignored as well?

6 A. I don't believe I did ignore your letters.  
7 I've spoken to you several times.

8 Q. You have?

9 A. Yes.

10 Q. About what?

11 A. About this case.

12 Q. What have you told me?

13 A. I've told you this very situation, that he  
14 owes more money. I believe that I sent you the same  
15 letter that I sent Earl Webster, and I communicated  
16 with you on this.

17 Q. Verbally or in writing?

18 A. Both.

19 Q. Do you have copies? Other than the  
20 pleadings you filed in this case, do you have copies  
21 of any of that?

22 A. The letter that I sent to Earl, I believe  
23 I sent a copy of that to you. And I'd have to look at  
24 my records to see if I sent anything else to you.

25 Q. Did you bring any of these notes or any of

1 these records that you've referred to with you to this  
2 hearing today?

3 A. I left those with my attorney.

4 Q. When you sent a copy, when you sent this  
5 letter that's been referred to as a pleading, and it's  
6 dated January 12, 2000, when you sent that in to the  
7 Division, did you send a copy of that to me?

8 A. I believe I did.

9 Q. Where else did you send it?

10 A. I tried to get ahold of -- to find out how  
11 I could get ahold of Nathan to send a copy to him, and  
12 I probably would have given a copy to my attorney.

13 Q. So are you testifying that you sent a copy  
14 to Mr. Goodman?

15 A. No.

16 Q. But you sent a copy to me?

17 A. I believe I did.

18 Q. And if I dispute that and I say I never  
19 received that and never saw it before this morning,  
20 how would you respond to that?

21 A. I'd say I believe that I sent it to your  
22 office.

23 MR. MITCHELL: Nothing further, your  
24 Honor.

25 THE COURT: Mr. Patterson, were you moving



1 for the admission of the invoice?

2 MR. PATTERSON: Yes, your Honor. I  
3 thought it would be more appropriate coming from the  
4 Claimant, but the Division would move that that be  
5 admitted as evidence.

6 THE COURT: Any objection, Mr. Mitchell?

7 MR. MITCHELL: No objection, your Honor.

8 THE COURT: Mr. Goodman?

9 MR. GOODMAN: No objection, your Honor.

10 THE COURT: As identified it is received  
11 as Exhibit Number 3, and will be provided for the  
12 Board. Any further testimony from this witness, Mr.  
13 Goodman?

14 MR. GOODMAN: I have a few questions.

15 REDIRECT EXAMINATION

16 BY MR. GOODMAN:

17 Q. Looking at that invoice that was just  
18 admitted, what date is that invoice, Mike?

19 A. 12/1 of '98.

20 Q. Is this the first time you got notice of  
21 the \$14 per square foot on this project?

22 A. I would suppose that it was.

23 Q. And this is after you had quit working for  
24 Nathan Goodrich, correct?

25 A. Correct.

1 Q. And did you have a falling out with him?

2 A. We did.

3 MR. GOODMAN: Nothing further.

4 THE COURT: Mr. Mitchell?

5 MR. MITCHELL: Nothing further, your  
6 Honor.

7 THE COURT: Mr. Patterson?

8 MR. PATTERSON: No, your Honor.

9 THE COURT: Mr. Mower, you're excused.  
10 Thank you.

11 MR. BURTON: Your Honor, I had a question.

12 THE COURT: Oh, I'm sorry. Yes, go ahead,  
13 Mr. Burton.

14 MR. BURTON: You indicated that you filed  
15 bankruptcy; is that correct?

16 THE WITNESS: That is correct.

17 MR. BURTON: And in the bankruptcy papers  
18 did you list all your assets and all your liabilities?

19 THE WITNESS: I did.

20 MR. BURTON: Did you list an account  
21 receivable with Mr. Goodrich or did you list him  
22 assuming that he owed you money?

23 THE WITNESS: I think that -- I can't  
24 remember how I listed him. I'd have to check the  
25 documents. But I probably -- I'd just have to look

1       because I can't remember.

2               MR. BURTON:   Have you ever made a claim  
3       against him to pay this excess compensation?

4               THE WITNESS:   When I got notice that they  
5       were suing me for the money and asking me for  
6       responses to their claims, I filed a counterclaim for  
7       what I was saying he owed.

8               MR. BURTON:   How much did you allege in  
9       the counterclaim it was?

10              THE WITNESS:   Seems like it was about \$400  
11       or \$500 more that he actually owed me.   I don't have  
12       the records in front of me, so I'm just guessing. But  
13       it was more than he paid me.

14              MR. BURTON:   Thanks.

15              THE COURT:   Any other questions by the  
16       Board?   Yes, Mr. Arbuckle?

17              MR. ARBUCKLE:   I'm interested in the  
18       timing of this invoice.   When was the first invoice  
19       given to you, the \$2,500 that you knew that was going  
20       to happen?

21              THE WITNESS:   If I recall, it was in  
22       July.

23              MR. ARBUCKLE:   So you knew what the price  
24       was going to be in July?

25              THE WITNESS:   The \$11 a square foot.   It

1 wasn't Nathan's practice -- and I had dealt with  
2 Nathan on several jobs, so I, you know, I felt  
3 comfortable that he was going to be honorable on the  
4 thing. But he didn't like to give a solid bid. He  
5 just said well, I'll give you a square footage and  
6 then we'll measure it up at the end, and the square  
7 footage price agreed to was \$11.

8 MR. ARBUCKLE: That was in July, and you  
9 paid him \$2,500, again?

10 THE WITNESS: Well, the agreement was  
11 prior to July. We paid \$2,500 in July.

12 MR. ARBUCKLE: And then the job was  
13 completed when?

14 THE WITNESS: Was finally completed in  
15 December.

16 MR. ARBUCKLE: The job was completed in  
17 December of what year?

18 THE WITNESS: '98.

19 MR. ARBUCKLE: I'm confused. This invoice  
20 is dated December 1 of '98. Did you go to work for  
21 him -- you went to work for him between July and  
22 December of '98?

23 THE WITNESS: Yes.

24 MR. ARBUCKLE: So you were on pretty good  
25 terms during those times?

1 THE WITNESS: Correct.

2 MR. ARBUCKLE: And then when did you leave  
3 his employ?

4 THE WITNESS: I think it was in October.

5 MR. ARBUCKLE: You left his employ in  
6 October. But this job from Cise was not even done  
7 until December?

8 THE WITNESS: That's right. When I  
9 started working with Nathan I indicated to him that I  
10 was going to have to make sure -- before I could start  
11 working full time with him that I was going to have to  
12 finish the Cise project. So -- on a part-time basis  
13 until that was done.

14 MR. ARBUCKLE: So was there any  
15 understanding between you two between July and October  
16 or December what the price was going to be? You knew  
17 about the square footage by then, right?

18 THE WITNESS: Yeah. I just -- Nathan  
19 always measured his own at the end, and if it seemed  
20 out of line, you know, I would question it. But it  
21 didn't seem out of line, the square footage. The only  
22 things done different was the price per square foot.

23 MR. ARBUCKLE: So 450 square feet is a  
24 reasonable number?

25 THE WITNESS: I think so.

1 MR. ARBUCKLE: Nothing further.

2 THE COURT: Go ahead, Mr. Bankhead.

3 MR. BANKHEAD: You indicated that your  
4 understanding on the basis of your employment is that  
5 you would be paid \$7 a square foot for installation of  
6 rock work?

7 THE WITNESS: That's correct.

8 MR. BANKHEAD: Do you know how many hours  
9 you worked in September and October or during this  
10 time?

11 THE WITNESS: I didn't keep track of  
12 hours.

13 MR. BANKHEAD: Do you know how many square  
14 feet you installed?

15 THE WITNESS: Yes.

16 MR. BANKHEAD: How many?

17 THE WITNESS: It's on the note pad that I  
18 don't have with me.

19 MR. BANKHEAD: Approximately, do you  
20 know?

21 THE WITNESS: All I know is that the  
22 square footage plus the time spent gathering the stone  
23 and materials and so forth totaled \$3,300.

24 MR. BANKHEAD: And if I understood  
25 correctly, you indicated that you thought you would be

1 paid \$50 an hour for picking up stone? Is that -- did  
2 I understand that correctly?

3 THE WITNESS: Yeah. When we were  
4 gathering stone, kind of -- because I was -- Nathan  
5 wanted me to work with him to try and help organize  
6 him a bit and to offer what expertise I could to help  
7 his business run more efficiently. And we'd drive out  
8 to, you know, Stansbury Island picking up rock, and so  
9 I would question him and say, "Is this worth our time  
10 to do this?"

11 And he said, "When you take and pick up  
12 the stone, deliver it, we're looking at about \$50 an  
13 hour for this work." So at that point then I thought  
14 well, if we're talking about \$50 an hour, then it's  
15 worth doing this. If you're only making \$10 an hour,  
16 you probably ought to hire someone else to do it.

17 THE COURT: Any other questions by the  
18 Board of this witness?

19 Mr. Mitchell?

20 MR. MITCHELL: Just a couple of follow-up  
21 questions, your Honor.

22 FURTHER RECROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q. You were aware that Mr. Goodrich was  
25 forced to file a Chapter 13 bankruptcy; is that

1 correct?

2 A. I don't know any of the -- all I know is  
3 that he filed it.

4 Q. And you were given notice; is that right?

5 A. I was.

6 Q. And you never filed a claim in that  
7 bankruptcy; isn't that correct?

8 A. I did not.

9 Q. And you were notified later by the  
10 bankruptcy court that you had no claim as a result of  
11 that; is that right?

12 A. I don't recall.

13 MR. MITCHELL: Nothing further, your  
14 Honor.

15 THE COURT: Mr. Goodman, anything further?

16 MR. GOODMAN: Nothing further, your Honor.

17 THE COURT: Mr. Patterson?

18 MR. PATTERSON: Nothing further, your  
19 Honor.

20 THE COURT: This witness is excused.

21 Thank you, Mr. Mower.

22 Mr. Mitchell, any testimony on behalf of  
23 the Claimant?

24 MR. MITCHELL: Yes. I believe Mr.  
25 Goodrich will testify.



1 THE COURT: Okay.

2 (The witness was sworn.)

3 THE COURT: Mr. Mitchell?

4 MR. MITCHELL: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. MITCHELL:

7 Q. Mr. Goodrich, I'm going to show you Mr.  
8 Mower's letter dated January 12 and ask if you've ever  
9 seen that before this morning.

10 A. No, I've never seen this.

11 Q. Have you had an opportunity to review that  
12 this morning?

13 A. Yeah, I've looked at it, yes.

14 Q. I'd like you to tell us about your  
15 relationship with Mr. Mower, how it started and how it  
16 progressed, and I'll interrupt you from time to time.  
17 I've never seen that letter before, either, so I'm not  
18 as prepared as I wanted to be, and I'd just like you  
19 to give us a narrative to begin with.

20 A. Well, I contacted someone with the stone  
21 supplier in Eastern Utah, and he knew some guy that  
22 needed some work done. So I called him and we struck  
23 up a relationship that way. He needed a stone mason  
24 and needed some work on his house, so we did it.  
25 That's how it started.

1 Q. When was that?

2 A. I'm going to guess sometime toward the end  
3 of '97, I think.

4 Q. Now, at some point in time you did some  
5 work on Mr. Cise's house; is that correct?

6 A. Yes.

7 Q. How did that come about?

8 A. He was building a home and he asked me to  
9 do the rock on his house for him.

10 Q. Mr. Cise or Mr. Mower?

11 A. Mr. Mower.

12 Q. Did you enter into an agreement with Mr.  
13 Mower?

14 A. Yes.

15 Q. Tell us what the terms of that agreement  
16 were with respect to what you agreed to do and what  
17 you were asked to do and what the price was or what  
18 the terms of payment were.

19 A. Well, everything in the document's true.  
20 About \$11 a foot, originally.

21 Q. Which document are you referring to?

22 A. I don't know. One of those, the \$11 a  
23 foot.

24 Q. Are you talking about the proposal?

25 A. I'd have to look at it. Yes, looks the

1 same as in here.

2 Q. Is it the contract between --

3 A. Where's the paper that had \$11 a foot on  
4 it? This here doesn't say anything about that.

5 Q. Let me show you the construction agreement  
6 on Legend Builders' letterhead and see if that's what  
7 you're referring to.

8 A. I must have been confused. I don't see  
9 anything in here about that.

10 Q. Well, forget about the document that  
11 you're referring to, since we can't find it, and tell  
12 me what you're talking about as far as the original  
13 terms and how they changed over time.

14 A. We agreed to do it for \$11 a foot and they  
15 gave us a deposit up front. And because of the  
16 popularity of the cultured stone, it was hard to get.  
17 It would come in a box at a time, and we just couldn't  
18 do the job. And I talked to him about it, and he  
19 agreed we'd do real stone on it. And he gave me a  
20 price for the total amount to do the whole job, and  
21 there was enough money to do it, so I agreed to do it  
22 for extra money because it was extra work. And  
23 everything was fine until we got upset at each other,  
24 and then everything changed.

25 Q. The price was originally \$11?

1 A. Right.

2 Q. And that was cultured stone?

3 A. It was.

4 Q. It was hard to get, and so you changed it  
5 to real stone?

6 A. Yes.

7 Q. And did you talk to Mr. Mower about  
8 raising the price at that time?

9 A. I did.

10 Q. And do you recall when that was?

11 A. It was before we started on the stone.

12 Q. And approximately when would that have  
13 been?

14 A. I'm going to guess in September.

15 Q. Of '98?

16 A. '98.

17 Q. And the price you talked to him about was  
18 what?

19 A. Well, he just told me a dollar amount,  
20 \$7,300. There was a total amount to do the inside of  
21 the fireplace with the hearth and plus the chimney.

22 Q. Where did the \$14 per square foot come in?

23 A. That's what's normally charged for the  
24 work we did. That's what we charged everybody.

25 Q. Now, I show you what's been marked or

1 what's been introduced as Exhibit 4.

2 THE COURT: The invoice is 3.

3 MR. MITCHELL: Okay, Exhibit 3.

4 BY MR. MITCHELL:

5 Q. Is that something that you can identify  
6 for us?

7 A. Yes.

8 Q. What is that?

9 A. It's an invoice sent to Mike Mower, Legend  
10 Builders.

11 Q. Now, on that invoice it says \$6,300 as the  
12 first figure under "amount." Is that the total  
13 contract price?

14 A. That's the total per square foot. Yeah,  
15 that's the total amount.

16 Q. And now if I understood your testimony,  
17 \$14 per square foot is what you usually charge?

18 A. Yes. We usually charge more if we have to  
19 go up high. We didn't charge him extra for the  
20 height. There was extras we could have charged for  
21 but we didn't.

22 Q. And the \$7,300 figure that you earlier  
23 testified to was the limit of what Mr. Mower agreed  
24 you could charge on that job?

25 A. Well, he just told me that he had that

1 much money and we could do it for that.

2 Q. So he actually came in under what he told  
3 you he could do it for?

4 A. There was a hearth stone that was never  
5 put on. I don't know whoever did it or what, but if  
6 we would have, it would have been another \$200 for the  
7 hearth stone.

8 Q. You heard Mr. Mower talk about the fact  
9 that this item for steel of \$150 was not appropriate.  
10 Do you have a response to that?

11 A. That what we always charge anybody. It  
12 costs money. It costs money to do it. The materials,  
13 you know, nobody gives it to me.

14 Q. So it doesn't make any sense to you that  
15 you'd do it for free?

16 A. No.

17 Q. Now, you heard Mr. Mower talk about \$7 an  
18 hour for stone that --

19 A. \$7 per square foot.

20 Q. Oh, excuse me, \$7 per square foot for  
21 stone that he was going to lay?

22 A. That's correct.

23 Q. What was your agreement as far as Mr.  
24 Mower working for you?

25 A. My agreement with him was that he could

1 work with me. He was already licensed as a general  
2 contractor, and I didn't want any employees, and he  
3 knew that, and because he was licensed that was fine.  
4 And I agreed to pay him \$7 a foot and then if he did  
5 anything by the hour, pay him by the hour for it.

6 Q. Did he do work for you?

7 A. Yeah, he did.

8 Q. Did you pay him?

9 A. I paid him \$1,500, and I have the  
10 cancelled checks to prove that, a \$1,000 check and a  
11 \$500 one.

12 Q. And did you owe him any other monies?

13 A. I owed him some money.

14 Q. How much more did you owe him?

15 A. I'm not sure right now because we did some  
16 stuff together, and we would -- I'd do the job and the  
17 homeowner would agree to pay us \$30 an hour, and he'd  
18 charge them \$50. I kept telling him you can't do that  
19 because I'm not making that much. And as far as  
20 gathering rock, it was by the ton, not by the hour.  
21 And the day we gathered rock I sat and waited for him  
22 for four hours to show up. And I'd call him and he  
23 kept saying, "I'm on my way." I read a whole book  
24 waiting for him.

25 Q. As you sit here today, can you tell us how

1 much you believe that you owe Mr. Mower for the  
2 services he performed for you, for the work he did  
3 with you?

4 A. Total was not \$3,800. Every time I've  
5 talked to him it's gone up even farther.

6 Q. Where did it start out?

7 A. I'm just guessing, but it was somewhere  
8 around \$3,000 total.

9 Q. And of that you paid him \$1,500?

10 A. I paid him \$1,500.

11 Q. And so it's your best guess today that the  
12 amount that he originally asked from you was \$3,000?

13 A. Well, that's what we agreed on, yes,  
14 originally.

15 Q. Is that the amount that you believe that  
16 you owed him?

17 A. That's what I believe. I'd have to go  
18 back and look. I can't remember.

19 Q. So if I take \$3,000 and subtract \$1,500  
20 paid, the amount, but for your bankruptcy, you would  
21 have owed him would be \$1,500?

22 A. Somewhere around there.

23 MR. MITCHELL: Okay. Nothing further,  
24 your Honor.

25 THE COURT: Mr. Goodman?



## CROSS-EXAMINATION

BY MR. GOODMAN:

Q. So your original agreement on the Cise property was \$11 a square foot for cultured stone, correct?

A. For cultured stone.

Q. And you got a \$2,500 deposit?

A. Yes.

Q. What did you do with that deposit?

A. I put it in a checking account.

Q. So you didn't deposit it with any supplier to receive materials?

A. No. It was written out to me. I had to deposit it.

Q. And then you stated at some time thereafter you agreed to or you talked to Mr. Mower about using natural stone, correct?

A. I did.

Q. Was anybody present during this conversation?

A. Just between him and I.

Q. Did you have a written authorization to charge \$14 a square foot?

A. He never even had a written contract. It was all verbal.

1           Q.       Did Mr. Cise ever give you authority or  
2 approval to charge \$14 per square foot?

3           A.       Not that I know of.

4           Q.       And so Mr. Mower worked for you for some  
5 time as an independent contractor; is that your  
6 testimony?

7           A.       That's right.

8           Q.       And you testified that you do owe him  
9 money as a result of that, from his employment,  
10 correct?

11          A.       Yes.

12          Q.       You had a falling out with Mr. Mower? I  
13 think you said you got in a dispute, had an argument  
14 with him during this time?

15          A.       That's right.

16          Q.       You didn't charge him \$14 a square foot on  
17 that December 1st invoice because you were mad at Mr.  
18 Mower, did you?

19          A.       No. If you saw the job, what we had to do  
20 for the job, you'd have charged more, especially when  
21 we got on the roof. We're lucky that somebody didn't  
22 get killed up there.

23                   MR. GOODMAN: Nothing further.

24                   THE COURT: Mr. Patterson?

25                   MR. PATTERSON: I have no questions of

1 this witness, your Honor.

2 THE COURT: Mr. Mitchell?

3 MR. MITCHELL: Nothing further, your  
4 Honor.

5 THE COURT: Any questions of this witness  
6 by the Board? Mr. Techmeyer?

7 MR. TECHMEYER: Yes, I do. Mr. Mower,  
8 testified that the job wasn't done until December of  
9 '98. This invoice is dated December 1st of '98, and  
10 yet reflects that the balance of \$3,950 is 61 to 90  
11 days past due. My assumption -- maybe that's a bad  
12 word to use -- is that this isn't the first invoice  
13 that went out to him. If you're reflecting on it 61  
14 to 90 days past due, I'm just curious of the timing  
15 conflict that's going on here. How, if the job wasn't  
16 done until December of '98 and the invoice is dated  
17 December of '98, how could it be over 60 days past  
18 due? And is this the first and only printed invoice  
19 that was sent out?

20 THE WITNESS: I don't think that -- I  
21 don't know if that's the first one, but that 60 to 90  
22 days, we've had a problem with our computer since day  
23 one doing that. I can bill somebody the first billing  
24 and it will come out 60 to 90 days. There's just  
25 something wrong with the computer. We've never been

1     able to figure it out. New program or something.

2                 MR. TECHMEYER: So it's not actually 61 to  
3     90 days past due?

4                 THE WITNESS: No. We actually finished  
5     laying rock on -- the last day I laid rock on the  
6     house was Thanksgiving Day. I went back the next day  
7     and cut the wires on it and washed it the next day.  
8     And he sent me a letter thanking me for the quality of  
9     work that we had done and demanded we come out and  
10    clean up our mess. Well, later on he told me that  
11    they agreed it wasn't our mess. It was supposedly  
12    left by the stucco man. We picked up other people's  
13    garbage that wasn't even ours, wrappers off the stone,  
14    shingles and stuff, and threw it away. I don't know  
15    what happened to that letter. Do you? Do you have  
16    the letter there? So we actually finished the job,  
17    really, as far as laying the stone, on Thanksgiving  
18    Day.

19                MR. TECHMEYER: I have no further  
20    questions, your Honor.

21                THE COURT: Mr. Weller?

22                MR. WELLER: No.

23                THE COURT: Mr. Arbuckle?

24                MR. ARBUCKLE: Yes. Is it your  
25    understanding that Mr. Mower was paid in full \$7,300

1 or whatever the rest of the stone was?

2 THE WITNESS: As far as I understood,  
3 yeah. It was before the end of the year.

4 MR. ARBUCKLE: So he was paid in full?

5 THE WITNESS: As far as I understand,  
6 yes.

7 THE COURT: Mr. Jensen?

8 MR. JENSEN: No further questions.

9 THE COURT: Mr. Burton?

10 MR. BURTON: None.

11 THE COURT: Mr. Bankhead?

12 MR. BANKHEAD: Do you remember whose idea  
13 it was to change from cultured stone?

14 THE WITNESS: It was my idea, because we  
15 were having a hard time getting it in, and we still  
16 have a hard time getting it in. It's so popular that  
17 we just finished a job that we'd been working on for  
18 almost ten months because we didn't get the stone.

19 MR. BANKHEAD: If you had taken the \$2,500  
20 and given it to your supplier, do you think that would  
21 have made any difference?

22 THE WITNESS: Difference as to what?

23 MR. BANKHEAD: As to how available the  
24 stone might have been at that point.

25 THE WITNESS: Had no bearing on it

1     whatsoever. Everybody's been having trouble getting  
2     it for years. It was even worse now, because of all  
3     the building across the country has just gotten, you  
4     know, people can't get bricks so they get artificial  
5     or real stone. They just can't do it fast enough.  
6     Can't get the material.

7                     MR. BANKHEAD: No further questions.

8                     THE COURT: Any other questions from the  
9     Board of this witness?

10                    Mr. Mitchell?

11                    MR. MITCHELL: Just one follow-up, your  
12     Honor.

13                             REDIRECT EXAMINATION

14     BY MR. MITCHELL:

15             Q.       Mr. Goodrich, you referred to a letter  
16     that Mr. Mower sent you. I'd like to show you that  
17     letter and ask you if that's the letter you're  
18     referring to.

19             A.       That's the letter.

20                    MR. MITCHELL: Your Honor, I'd like to  
21     have this marked and entered as an exhibit.

22                    THE COURT: Show it to counsel before I  
23     consider that.

24                    Any objection, Mr. Goodman?

25                    MR. GOODMAN: No objection, your Honor.

1 THE COURT: Mr. Patterson?

2 MR. PATTERSON: None, your Honor.

3 THE COURT: It will be identified as  
4 Exhibit Number 4 and it is received. I'll get copies  
5 to the Board at an appropriate time. Go ahead.

6 BY MR. MITCHELL:

7 Q. That letter is dated December 2nd; is that  
8 right?

9 A. Yes.

10 Q. And is it your recollection that you  
11 received it sometime after that day?

12 A. Yes.

13 Q. I notice in the letter there's nothing  
14 there that indicates that you owe Mr. Goodrich any  
15 money.

16 A. Mr. --

17 Q. I mean Mr. Mower, excuse me.

18 A. No.

19 Q. I notice in the letter that he threatened  
20 to withhold or deduct from your contract the amount of  
21 your contract, \$50 -- is it per hour?

22 A. Yes.

23 Q. For cleanup work?

24 A. Yes.

25 Q. There's no suggestion there that he

1 doesn't owe you any money; is that correct?

2 A. No suggestion.

3 MR. MITCHELL: Okay, nothing further, your  
4 Honor.

5 THE COURT: Mr. Goodman?

6 MR. GOODMAN: Nothing further, your  
7 Honor.

8 THE COURT: Mr. Patterson?

9 MR. PATTERSON: No questions.

10 THE COURT: If I could see the letter,  
11 please.

12 Any other questions of this witness by the  
13 Board? You're excused, Mr. Goodrich. Thank you.

14 Mr. Mitchell, any further testimony on  
15 behalf of the Claimant?

16 MR. MITCHELL: No, your Honor.

17 THE COURT: Mr. Goodman, any further  
18 testimony on behalf of Legend?

19 MR. GOODMAN: I'd like to recall Mr.  
20 Mower, please.

21 THE COURT: Okay. Take the stand, please,  
22 and recall you're still under oath.

23 Mr. Goodman?

24 MR. GOODMAN: Couple things.

25



## FURTHER REDIRECT EXAMINATION

BY MR. GOODMAN:

Q. Counsel just offered a letter, Exhibit 5 dated December 2nd, 1998. Did you send that letter out to Mr. Goodrich?

A. I did.

Q. When you sent that letter out, had you received this invoice dated December 1st, 1998?

A. I'm sure that I had not.

Q. So when you sent the letter December 2nd, did you know how much or if you owed Mr. Goodrich any money at all at that point?

A. No.

Q. Did you ever have a conversation with a supplier of cultured stone during the construction of this house?

A. State Stone.

Q. You talked to State Stone?

A. Yes.

Q. Do you recall who you spoke to?

A. I don't recall her name. It was an elderly lady is the best I can do.

MR. MITCHELL: Your Honor, I'm going to object on the grounds of hearsay as to what was said by somebody at State Stone.

1           THE COURT: Well, it is hearsay, but it is  
2     admissible unless -- it is admissible but cannot be  
3     relied upon by the Board to resolve the dispute of a  
4     factual matter without some other corroborative  
5     witness or otherwise admissible evidence beyond  
6     hearsay. So go ahead.

7     BY MR. GOODMAN:

8           Q.       Did this individual state anything to you  
9     regarding Mr. Goodrich and his getting supplies from  
10    State Stone?

11          A.       Yeah. I went in and asked to find out why  
12    the stone hadn't -- because Nathan kept telling me  
13    that it wasn't coming in, wasn't coming in, and that  
14    partial orders were coming in and he wanted to pick up  
15    a full order. So I went in to find out why,  
16    personally, to find out why we were having such a hard  
17    time getting the materials, since we had paid the  
18    deposit so much earlier. And in talking to the lady  
19    there, who I got impression she was either the wife of  
20    the owner or the owner. She was very knowledgeable of  
21    the company. She said that Nathan hadn't deposited  
22    any money with them and that he didn't need to because  
23    he had an account there. And she said that his order  
24    had come in partial orders over the period of time,  
25    and that he hadn't come to pick them up, so she just

1       resold them.

2           Q.       So she told you that the cultured stone  
3       had been received, but Mr. Goodrich refused to pick it  
4       up?

5           A.       Right.

6           Q.       Was the delay in getting the cultured  
7       stone one reason you agreed to use natural stone?

8           A.       The delay in getting the natural stone is  
9       why I think Nathan decided --

10          Q.       The delay in getting the cultured stone,  
11       you mean?

12          A.       His reported delay. Because in fact there  
13       apparently wasn't a delay. It was because Nathan  
14       didn't want to go pick up, you know, partial orders.  
15       He wanted to do the whole thing at once. And Nathan  
16       is a masonry contractor, and he knows how hard it is  
17       to get in, and he'd be familiar that you have to come  
18       in to pick up partial orders.

19          Q.       You've already testified that based on  
20       your experience, natural stone is more expensive than  
21       cultured stone?

22          A.       Correct.

23          Q.       When you agreed to use natural stone, did  
24       you ask Mr. Goodrich why he would be willing to do  
25       that based on the same contract price?

1           A.           I didn't need to ask him. Nathan offered  
2           it. Nathan said that since we're having such a hard  
3           time, let's go with this. He asked me how much I've  
4           got into it, and at that time we were on good working  
5           terms and we were talking about sharing profits and  
6           stuff like that. So I told him how much I have into  
7           it. It was never discussed that the customer was  
8           going to be billed more, or if, as a subcontractor, he  
9           would bill me more.

10          Q.           Did you ever seek approval from Mr. Cise  
11          to charge \$14 per square foot for natural stone?

12          A.           No.

13                   MR. GOODMAN: Nothing further, your  
14          Honor.

15                   THE COURT: Mr. Mitchell?

16                   MR. MITCHELL: Nothing further, your  
17          Honor.

18                   THE COURT: Mr. Patterson?

19                   MR. PATTERSON: No questions, your Honor.

20                   THE COURT: Any further questions of the  
21          Board of this witness? Yes, Mr. Arbuckle?

22                   MR. ARBUCKLE: Mr. Mower, the budget that  
23          you had, was the amount of \$7,300 an accurate number?

24                   THE WITNESS: Seems like it was \$6,300 to  
25          me, but I'd have to see my notes. I don't have them

1 here.

2 MR. ARBUCKLE: And were you paid in full  
3 for that?

4 THE WITNESS: Yes, I was.

5 MR. ARBUCKLE: And so my question is: Why  
6 wasn't he paid for the \$11 a square foot anyway?

7 THE WITNESS: I believe that he has been  
8 compensated.

9 MR. ARBUCKLE: So that's your testimony,  
10 that the compensation was paid for Mr. Cise, or  
11 whoever, Cise, is in the middle of this mess?

12 THE WITNESS: Well, I didn't, you know, it  
13 wasn't my intent to have Mr. Cise in the middle of  
14 this mess. I was frustrated that -- I mean, I've had  
15 disagreements with subcontractors before on amounts  
16 like this where you go in to small claims and you  
17 settle them in one night. So I'm frustrated that Mr.  
18 Cise has been drug into it, and I'm frustrated that  
19 I've been drug into it and had to hire an attorney  
20 over such a small amount. And, you know, I just --  
21 I've never been able to contact Nathan Goodrich to go  
22 over anything, and so this is what we're left with.

23 THE COURT: Any other questions by the  
24 Board?

25 MR. BURTON: I've got one.

1 THE COURT: Yes, Mr. Burton?

2 MR. BURTON: I just want to make sure I'm  
3 clear on this because to me this is an important  
4 point. You've testified that you never had a  
5 conversation with Mr. Goodrich about raising the price  
6 on the stone. Is that accurate?

7 THE WITNESS: That's correct.

8 MR. BURTON: And you heard him testify  
9 that he did have such a conversation with you. Was he  
10 mistaken on it?

11 THE WITNESS: Well, he's mistaken on the  
12 interpretation. His interpretation is that I was  
13 saying that he had \$6,300 or whatever with which to do  
14 the job with, and I never said that. I said what was  
15 in my budget to do it. And we were talking at that  
16 time in terms of sharing profits, which I never shared  
17 any profits for jobs that I worked on with him, so I  
18 don't see why he would be entitled to profits that,  
19 you know, that he shared with me. And that's where  
20 that came from. I don't know if he interpreted that  
21 as I was saying to him do whatever you want, but just  
22 don't go over this amount. That was never, ever  
23 said.

24 MR. BURTON: Let me see. Was there a  
25 specific discussion when the stone was changed about

1 whether it would cost more money? Was that issue  
2 simply silent with no discussion about it one way or  
3 another? And the third alternative, was there a  
4 specific discussion that said it will not cost any  
5 more?

6 THE WITNESS: There was no discussion that  
7 it would cost more.

8 MR. BURTON: Was the issue talked about,  
9 or was there simply no discussion about it, period,  
10 one way or another?

11 THE WITNESS: As I stated, at the time we  
12 were working as partners with respect to the stone,  
13 and at that time we were talking about sharing the  
14 profits; that we'd do the jobs, subtract the \$7 a  
15 square foot, subtract the materials, and then whoever  
16 the lead came from got 10 percent of the job and then  
17 anything over that we'd share the profits. And no  
18 profits were ever shared. And so, like I said, I  
19 don't feel compelled that I should have to share my  
20 profits with him. So there was no discussion of ever  
21 raising the prices at the job.

22 MR. BURTON: There was no witness to any  
23 of these conversations, just you and Mr. Goodrich?

24 THE WITNESS: Yes. I think it's also  
25 important to note that I think that part of Nathan's

1 urgency to do the -- to get the job going with natural  
2 stone is he was under the impression that if he  
3 hurried and did some work, that he could get a draw on  
4 the job. Nathan was constantly -- he was constantly  
5 out of money. I ended up loaning him \$300 because  
6 they were having such a -- supposedly were not  
7 collecting. He was not collecting any money off the  
8 jobs that we had done together. And he would indicate  
9 to me his financial problems, so I loaned him \$300.  
10 He was always under extreme pressure financially.

11 And a couple of days or a week -- I  
12 forget exactly the time frame -- after he started to  
13 work with the stone, he invoiced me for some more  
14 money. And I told him at that point we couldn't  
15 invoice for more money until the job was done, because  
16 we've already collected -- already been paid \$2,500.  
17 And he said to me at that point that he thought that  
18 if he started the job, he could get a draw. Well, he  
19 didn't have cultured stone to start, and so I suppose  
20 that he thought that was, as far as a cash flow, an  
21 advantage to start with the natural stone as well.

22 THE COURT: Any other questions by the  
23 Board?

24 MR. BANKHEAD: I have one final question.

25 THE COURT: Go ahead.



1 MR. BANKHEAD: Do I understand correctly  
2 that you did have a specific conversation with the  
3 homeowners saying or getting approval for the change  
4 from cultured stone to natural stone? Did you inform  
5 them at that time there would be no additional charge  
6 for the change?

7 THE WITNESS: I did.

8 THE COURT: Mr. Goodman, anything  
9 further?

10 MR. GOODMAN: Nothing further, your  
11 Honor.

12 THE COURT: Mr. Mitchell?

13 MR. MITCHELL: Brief follow-up, your  
14 Honor.

15 FURTHER RECROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q. Board member Burton asked you whether  
18 there was any talk about raising the price when you  
19 went from cultured to natural, and you said there was  
20 no discussion about that. And he asked you to be  
21 specific about a couple of things, and one of them was  
22 if there was any discussion about not raising the  
23 price. Was there a discussion about not raising the  
24 price?

25 A. No.

1           Q.       And maybe I'm confused, but I believe you  
2 testified earlier that Mr. Goodrich specifically  
3 agreed that there wouldn't be any additional price,  
4 that he specifically said that we're going to change  
5 from cultured to real, but I'm going to do it for the  
6 same price.

7           A.       No, the discussion was, he was -- he came  
8 to me and said let's get this job underway, and let's  
9 go ahead and do it with natural stone. And I'd be --  
10 I think it's probably factual to say that I told him  
11 that I couldn't charge the customer more. I know I  
12 told him I'd have to get approval from the customer,  
13 and I told the customer that it would cost more.

14          Q.       So you specifically told Mr. Cise that it  
15 would cost more?

16          A.       Yes.

17          Q.       And so if he gets up and tell us that that  
18 never occurred, he's mistaken, too; is that correct?

19          A.       That would be correct.

20                   MR. MITCHELL:    Nothing further.   Thank  
21 you.

22                   THE COURT:   Mr. Goodman?

23                   MR. GOODMAN:   Nothing further, your Honor.

24                   THE COURT:   Mr. Patterson?

25                   MR. PATTERSON:   (Shook his head.)

1 THE COURT: Mr. Mower, you're excused.  
2 Thank you.

3 Mr. Mitchell, any further testimony?

4 MR. MITCHELL: Yes. I've got to call Mr.  
5 Goodrich back.

6 THE COURT: Okay, Mr. Goodrich, please  
7 recall you're still under oath.

8 Mr. Mitchell?

9 FURTHER REDIRECT EXAMINATION

10 BY MR. MITCHELL:

11 Q. Mr. Goodrich, you heard Mr. Mower's  
12 testimony about the scenario at State Stone where  
13 stone came in but you just didn't want to go pick up  
14 partial loads. Is there any truth to that?

15 A. Yeah, there's truth to that.

16 Q. Tell us about it.

17 A. Well, originally when we talked about  
18 doing this house, he gave me a time frame which it  
19 didn't fall within. When we finally did go do the  
20 job, we started when it was ready. And if we'd have  
21 gone and picked up stone I'd have picked up one box  
22 and had to drive it out there with one box, and it  
23 just wasn't worth it.

24 Q. And why wasn't it worth it?

25 A. Because you've got to hand unload all the

1 stuff, and there was no place to put it, and the place  
2 was muddy. There was no place to put the rock. It  
3 would have gotten scratched up and damaged.

4 Q. What was the delay in starting the job?

5 A. It wasn't ready.

6 Q. Why not?

7 A. Just -- it wasn't done. The stucco wasn't  
8 on. The windows weren't on. The deck wasn't in.

9 Q. Who was responsible for getting them in?

10 A. Legend Builders.

11 Q. Mr. Mower?

12 A. Mr. Mower.

13 Q. Now, Mr. Mower, you also heard him suggest  
14 that you were mistaken in your interpretation of his  
15 parameters as far as costs for doing your part of the  
16 job. Were you mistaken as to what he said as far as  
17 that he had \$7,300 to do your part of the job?

18 A. What he told me was there was \$6,000 to do  
19 rook and there was \$1,300 to do the hearth. I don't  
20 know what that meant exactly, so that's \$7,300  
21 total.

22 MR. MITCHELL: Nothing further, your  
23 Honor.

24 THE COURT: Mr. Goodman?  
25

FURTHER RECROSS-EXAMINATION

BY MR. GOODMAN:

Q. Do you ever store materials on a job?

A. No, because people steal it.

Q. So you never keep materials on the job?

A. No. People steal it.

Q. Even if you have the job secure and it's locked?

A. Pertaining to this job? It wasn't locked.

MR. GOODMAN: Nothing further.

THE COURT: Mr. Patterson?

MR. PATTERSON: No questions, your Honor.

THE COURT: Any further questions for to witness by the Board?

Mr. Goodrich, you're excused. Thank you.

Mr. Mitchell, any further testimony?

MR. MITCHELL: No, your Honor.

THE COURT: Mr. Goodman?

MR. GOODMAN: We call Mr. Cise, your Honor.

THE COURT: Mr. Cise?

(The witness was sworn.)

THE COURT: Please be seated.

Mr. Goodman?

## 1 DIRECT EXAMINATION

2 BY MR. GOODMAN:

3 Q. Can you state your name for the record,  
4 Mr. Cise.

5 A. David Michael Cise.

6 Q. And what is your current address?

7 A. 16162 South Step Mountain Road.

8 Q. And you contracted with Legend Builders to  
9 build your home, correct?

10 A. Correct.

11 Q. Did you contract with Legend Builders to  
12 build your home?13 A. I contracted with Legend Builders under  
14 the understanding that Michael Mower was the President  
15 and was the sole person.16 Q. You've been present during this entire  
17 hearing this morning, haven't you?

18 A. Yes.

19 Q. And you've heard all the testimony and  
20 everything that's gone on. I guess one question that  
21 you can answer better than anybody here and resolve is  
22 did you have a conversation with Mr. Mower regarding  
23 the change from cultured stone to natural stone?

24 A. I did.

25 Q. Did Mr. Mower tell you that the natural

1 stone would cost more money?

2 A. No. He told me that the -- there would be  
3 no additional cost for the natural stone. Since I  
4 valued natural stone greater than cultured, that was  
5 kind of a break.

6 Q. And you thought you were getting a good  
7 deal?

8 A. Yeah.

9 MR. GOODMAN: Nothing further, your  
10 Honor.

11 THE COURT: Mr. Mitchell?

12 MR. MITCHELL: Nothing, your Honor.

13 THE COURT: Mr. Patterson?

14 MR. PATTERSON: No questions.

15 THE COURT: Any questions of this witness  
16 by the Board?

17 MR. ARBUCKLE: I have a question.

18 THE COURT: Yes, Mr. Arbuckle?

19 MR. ARBUCKLE: Mr. Cise, you understand  
20 you paid Mr. Mower and Legend Builders in full?

21 THE WITNESS: Yes, I did.

22 MR. ARBUCKLE: And did you get a lien  
23 release from the subcontractors?

24 THE WITNESS: A lien release from Mr.  
25 Mower?

1 MR. ARBUCKLE: Well, from Mr. Mower or  
2 anybody else who supplied labor and materials on the  
3 job.

4 THE WITNESS: Yes, I did.

5 MR. ARBUCKLE: Have you gotten a lien  
6 release from Mr. Mower?

7 THE WITNESS: Yes.

8 MR. ARBUCKLE: But not, obviously,  
9 Bedrock?

10 THE WITNESS: That was dismissed, I  
11 believe.

12 MR. ARBUCKLE: Okay. So the work was done  
13 to your satisfaction?

14 THE WITNESS: Yes.

15 MR. ARBUCKLE: Let me think a minute here.

16 THE COURT: I'll come back to you. Any  
17 further questions?

18 MR. JENSEN: I have one.

19 THE COURT: Mr. Jensen?

20 MR. JENSEN: Did you ever see a copy of  
21 Mr. Mower's contractor's license?

22 THE WITNESS: Yes, I did.

23 MR. JENSEN: And it said just Mike Mower?

24 THE WITNESS: Mike Mower.

25 MR. JENSEN: Did that raise a question in



1 your mind that maybe --

2 THE WITNESS: I guess in the beginning of  
3 the agreements when I was signing, being excited,  
4 being an excited homebuilder, I didn't peruse the  
5 contract in that area as opposed to the other areas,  
6 where it specified materials.

7 MR. JENSEN: I might ask, what do you do  
8 for your occupation or profession?

9 THE WITNESS: I'm an engineer developing  
10 medical products.

11 MR. BURTON: Nothing else.

12 THE COURT: Mr. Bankhead?

13 MR. BANKHEAD: When you signed the  
14 contract with Mr. Mower, was it with your  
15 understanding that you were signing a contract with a  
16 licensed contractor?

17 THE WITNESS: Yes.

18 MR. BANKHEAD: That's all.

19 THE COURT: Mr. Arbuckle?

20 MR. ARBUCKLE: Nothing further, thanks.

21 THE COURT: Anything else for this  
22 witnesses, Mr. Mitchell?

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q. You recall when we served you with a

1 complaint seeking to foreclose Mr. Goodrich's lien?

2 A. Yes, I do.

3 Q. And you contacted an attorney, Brad  
4 Helsten, after that?

5 A. Yes.

6 Q. And Mr. Helsten sent a letter to me  
7 demanding that we dismiss that lawsuit against you  
8 because you qualified under the Lien Recovery Act, and  
9 as part of that letter he sent me documentation,  
10 including Mr. Mower's construction license?

11 A. Correct.

12 Q. And you recall as a result of that letter  
13 we did, in fact, dismiss you from the lawsuit?

14 A. Yes.

15 Q. And you realize that we did dismiss you  
16 from the lawsuit based upon our belief that you were  
17 correct that you would covered by the Lien Recovery  
18 Act?

19 A. The Lien Recovery Act?

20 Q. Well, the lien recovery fund.

21 A. This? What we're hearing about right  
22 now?

23 Q. That's correct.

24 A. I was being released from the lawsuit,  
25 from the lien.

1           Q.       Well, let me just rephrase the question.  
2       Maybe it wasn't clear. We dismissed you from the  
3       lawsuit because of your representation and our belief  
4       in your representation that you'd met all the  
5       requirements to be protected by the Lien Recovery  
6       Statute.

7           A.       (No audible or visible response.)

8           Q.       Let me try again.

9           THE COURT: Let me help if I can.  
10       Do you know why you were released from the  
11       lawsuit?

12       THE WITNESS: Because Michael Mower was a  
13       licensed contractor. At that time I believed I was  
14       under contract with him, and I still do believe I was  
15       under contract with Michael Mower.

16       MR. MITCHELL: Okay. Nothing further,  
17       your Honor. Thank you.

18       THE COURT: Mr. Goodman?

19       MR. GOODMAN: Nothing further, your  
20       Honor.

21       THE COURT: Mr. Patterson?

22       MR. PATTERSON: (Shook his head).

23       THE COURT: Mr. Cise, you're excused.  
24       Thank you.

25       Mr. Goodman, any further testimony?

1 MR. GOODMAN: None, your Honor.

2 THE COURT: Closing argument, Mr.  
3 Mitchell?

4 MR. MITCHELL: Just briefly, your Honor.

5 Mr. Cise thought he was covered by the  
6 Lien Recovery Fund. He thought he was doing business  
7 with -- that he had contracted with a licensed  
8 contractor. There's no question that he didn't  
9 contract with a licensed contractor. We believe that  
10 the statute should be construed to protect him under  
11 these circumstances, where you have Mr. Mower, who's  
12 doing business as a corporation, he's a sole  
13 shareholder and he's not -- by his own testimony this  
14 corporation is a corporation in name only. It's not  
15 something where he had annual meetings. He never had  
16 -- in the actually incorporation, that he never had  
17 officers other than himself, he never had directors,  
18 he never had shareholders meetings, he never had  
19 books. He never did anything other than incorporate,  
20 or actually change the name of the corporation. We  
21 don't think, under those circumstances where the  
22 corporation really is Michael Mower, that the Lien  
23 Recovery Act requirement that Mr. Cise enter into a  
24 contract with a licensed contractor should take away  
25 Mr. Cise's protection, because what Mr. Goodrich will

1 be forced to do if the Lien Recovery Act doesn't come  
2 into play is set aside that release of his claim that  
3 was made based upon everybody's understanding that he  
4 was protected by the Lien Recovery Act. So it's  
5 really you have an innocent homeowner who believed in  
6 good faith that he was meeting all the requirements,  
7 and we don't think that he should be punished for  
8 that.

9 THE COURT: Mr. Goodman?

10 MR. GOODMAN: Just a few things as well.

11 Mr. Mower's kind of in an ironic position,  
12 because he agrees with Mr. Mitchell on the licensing  
13 issue. He thought he was in compliance with the  
14 statute, and he acted in ignorance of it. That may be  
15 insufficient, but he feels that he was a licensed  
16 contractor and he believed that he contracted with  
17 Mr. Cise as such, and that test should be met.

18 Mr. Mower's dispute with Nathan Goodrich  
19 and Bedrock Masonry is really a valuation issue,  
20 whether or not he's entitled to recover \$14 a square  
21 foot, and whether or not money should be offset  
22 against that. Mr. Goodrich acknowledges and admits  
23 that he owed my client contemporaneous with  
24 performance on this contract. Mr. Mower's emphasis  
25 really is on the valuation prong and not the licensing

1     prong.

2                   THE COURT:   Mr. Patterson?

3                   MR. PATTERSON:   The statutory provision  
4     that we've been referring to, and I'll just read it to  
5     refresh our memories, states: "To recover from the  
6     fund, regardless of whether the residence is occupied  
7     by the owner or a subsequent owner or the owners or  
8     subsequent owners, tenant or lessee, a qualified  
9     beneficiary shall establish that the owner of the  
10    owner-occupied residence or the owner-agent entered  
11    into a written contract with an original contractor,  
12    licensed or exempt from licensure under Title 58,  
13    Chapter 55 -- Title 58, Chapter 55, Utah Construction  
14    Trades and Licensing Act, for the performance of  
15    qualified services."

16                   It is the Division's position that this  
17    statute has not been met for several reasons, and I  
18    would like to go through them one at a time. The  
19    ultimate request of the Division is that this claim be  
20    denied. It's one of those unfortunate circumstances  
21    where it is impossible for the creators of a statute  
22    to be able to encompass every single case that may  
23    exist out there within the umbrella of a particular  
24    given act or legislation.

25                   The claim that has been raised by the

1 Claimant that somehow the corporation was an alter ego  
2 of Mr. Mower is actually an equitable doctrine. It  
3 has been recognized as an equitable doctrine in the  
4 State of Utah most recently in Warner Jacobsen versus  
5 -- that's a good question, what that last word is.  
6 It's like Bernard or something like that, and 946 P2d,  
7 744. On page 747 it states that it is an equitable  
8 doctrine. That case is preceded by three other  
9 cases -- well, excuse me -- several other cases that  
10 also hold the same thing, that when you are asking a  
11 tribunal to exercise or use this doctrine, this  
12 equitable doctrine, is it equity.

13 Now, it would be nice if in fact the Board  
14 and the Division had equitable powers. This might be  
15 a case where that could be exercised in. However, the  
16 Division and the Department is a statutory creature.  
17 It was created by the Legislature, and as such it only  
18 has -- these two agencies only have -- the authority  
19 granted to it by the Legislature. They have limited  
20 jurisdiction. And in going through their enabling  
21 legislation for both of those agencies, it is void of  
22 any language that would infer or imply that the agency  
23 has the ability to exercise equitable authority in any  
24 of the matters that it does handle.

25 Now, there are some cases out there that I

1 would like to briefly tell you about. The first one  
2 is Avis versus the Industrial Commission. In that  
3 particular case the court of Appeals ruled -- and  
4 that's a '92 case -- that the Industrial Commission  
5 is not a Court of general jurisdiction. And in an  
6 earlier case, in Bevan versus Industrial Commission,  
7 it stated that the Industrial Commission had only  
8 those powers expressly or impliedly granted to it by  
9 the Legislature.

10 Now, the Industrial Commission is like the  
11 Department of Commerce and the Division. It is a  
12 statutorily-created entity. It has only those  
13 authorities granted to it or that can be implied from  
14 the grant of authority in the enabling legislation.  
15 We believe that these two cases are controlling, and  
16 that based upon the lack of language that grants any  
17 type of equitable powers to the Division or the  
18 Department of Commerce, that this tribunal cannot  
19 exercise equitable principles or concepts within its  
20 decisions. Its decisions must be based upon the law  
21 and cannot be based upon equity.

22 Now, the intent of the Legislature has  
23 also been brought up. We're all familiar with the  
24 two-prong intent that has been stated for this  
25 legislation, to protect homeowners and to pay claims



1 of claimants. However, that intent is conditioned  
2 upon the individual meeting the criteria within the  
3 legislation to begin with. That criteria has not been  
4 met because the only argument that has been raised and  
5 that could be raised for this is that by using the  
6 doctrine of alter ego, the contract was, in fact,  
7 entered into with a licensed contractor. As you read  
8 through contract you'll notice that quite clearly it  
9 is not with Michael Mower. It is clearly with the  
10 corporation. We cannot exercise that equitable  
11 doctrine, and therefore in looking at the legislative  
12 intent we cannot say that condition has been met.

13 Before we even look at the legislative  
14 intent, we first have to look at the plain language of  
15 the Act. If the language of the Act is plain, we do  
16 not need to look at the legislative intent. In Seddon  
17 versus Graham, the Utah Court of Appeals in 1991 gave  
18 us that principle. We are bound by that concept of  
19 law in this matter.

20 Now, in determining whether or not a  
21 statute is ambiguous, it is ambiguous if it can be  
22 understood by reasonable, well-informed persons to  
23 have different meanings. Can we actually say that  
24 this language that I just read can have different  
25 meanings? It states that the owner must enter into a

1 written contract with the original contractor,  
2 licensed or exempt from licensure in the State of  
3 Utah. I don't see that that is an ambiguous statute.  
4 It's quite plain in what it means.

5 Now, if one was to say well, you know,  
6 perhaps the contract itself was ambiguous, and so  
7 therefore we can look to some of the testimony that  
8 has been offered today to help explain the terms of  
9 the contract, I would reply in stating that the parol  
10 evidence would prevent that testimony from being  
11 considered to alter the terms of the contract. When  
12 you are changing the parties to a contract, that, in  
13 my opinion, would be a substantial change to a  
14 contract that could not occur without the parties  
15 signing a subsequent written document to agree to  
16 that.

17 It is an unfortunate circumstance, but the  
18 Act was not written to include every circumstance that  
19 existed out there. That is unfortunate. But this  
20 tribunal lacks the authority to exercise equitable  
21 powers. It cannot grant the alter ego argument that  
22 has been raised. It is improper. If this is a form  
23 of limited jurisdiction, we must stick to those  
24 principles of law. We do not need to look to the  
25 legislative intent because the statute is not

1     ambiguous.   We have a circumstance where it is known  
2     to everyone that the corporation entered into a  
3     contract with the homeowner, and therefore that is the  
4     only contract that we have to work upon.   With that  
5     criteria required by the statute, a condition that  
6     must have been met in order to recover from the fund  
7     has not been met, and therefore we request that the  
8     claim be denied.

9                     THE COURT:   Mr. Mitchell?

10                    MR. MITCHELL:   As a matter of law, courts  
11     interpret contracts in accordance with the parties'  
12     agreement.   One of the requirements for a valid  
13     contract is a meeting of the minds.   Both Mr. Mower  
14     and Mr. Cise testified that they believed that the  
15     licensed party was the contracting party.   Courts  
16     reform contracts as a matter of law to comport with  
17     the parties' agreement.   This body could take this  
18     contract and say okay, Mr. Mower, who is a contractor,  
19     not an attorney, Mr. Cise, who is an engineer, not an  
20     attorney, entered into an agreement.   They did it with  
21     Legend Builders, Inc., the alter ego of Mr. Mower.  
22     Forget about equitable principles for a moment.   Just  
23     as a matter the law these parties intended that a  
24     licensed contractor would enter into a contract to  
25     perform covered services and for a price.   This body

1 can reform that contract, as a matter the law, and say  
2 these parties intended to do exactly what the statute  
3 requires, have a licensed contractor perform licensed  
4 services.

5 Now, as far as valuation goes, the first  
6 time we've been aware that Mr. Mower was going to  
7 stand up and say he didn't owe Mr. Goodrich any money  
8 was this morning. Mr. Mower never sent anybody  
9 besides this body a copy of that letter. We were not  
10 prepared to put on counterevidence. I never talked to  
11 Mr. Goodrich about that. Nonetheless, Mr. Goodrich  
12 got on the stand and Mr. Goodrich didn't say I never  
13 owed Mr. Mower any money. I don't owe him a cent.  
14 Instead he got up and he told the truth. He said my  
15 best recollection is that I owe him \$1,500 in addition  
16 to the \$1,500 that I paid him. So far as valuation  
17 goes, there could be an offset to the \$3,900 plus, but  
18 we're asking for \$1,500.

19 Now, I submit that that would be a  
20 reasonable deduction from the amount that Mr. Goodrich  
21 is entitled to under the contract, if the Board  
22 decides that is the way to go. But as a matter of  
23 law, that would not be proper. Mr. Goodrich owes Mr.  
24 Mower no money at all because his bankruptcy has  
25 discharged and prevented Mr. Mower from collecting

1     that \$1,500 on a separate contract that has nothing to  
2     do with the contract before this Court. In other  
3     words, Mr. Goodrich performed services for Mr. Mower  
4     on Mr. Cise's project. Mr. Goodrich had Mr. Mower  
5     work for him on other projects. So whatever was owed  
6     or not owed on other projects is not necessarily tied  
7     to this project, and whatever is owed over here was  
8     discharged in the bankruptcy. I suppose that it's a  
9     matter of fairness that \$1,500 would be reasonable to  
10    deduct from the contract price.

11                 THE COURT: Mr. Goodman, anything else?

12                 MR. GOODMAN: I have nothing further, your  
13    Honor.

14                 THE COURT: Mr. Patterson?

15                 MR. WEBSTER: One of the Division's  
16    greatest concerns if this claim is paid is that it  
17    really opens up the fund that anyone that could have  
18    been licensed would qualify as, quote, a "licensed  
19    contractor" under the Act. And I think that obviously  
20    that result is just twisting the statutory language  
21    beyond recognition and would not be appropriate. If,  
22    for example, the Board were to determine, you know,  
23    well, let's cut the baby in half like the wise king  
24    did at one time and split the cost of the qualified  
25    services, that of course would require recalculation

1 of the interest, the attorneys' fees and the other  
2 things. But we just believe that it would not be  
3 appropriate. The Supreme Court in Stout Western  
4 Realty versus Broderick stated that parol evidence is  
5 not permitted to vary the clear, unambiguous terms of  
6 the parties to a written contract.

7 THE COURT: What's the cite on that?

8 MR. WEBSTER: That is 522 P2d 144.

9 THE COURT: Thank you.

10 MR. WEBSTER: Would you like the page  
11 number, too?

12 THE COURT: No, I'll find it.

13 MR. WEBSTER: In that, I believe that the  
14 terms are quite clear in this contract. It was Legend  
15 Builders, Inc. who was the party. I'm sure that, you  
16 know, if Legend Builders, Inc. had been able to have,  
17 you know, a few more contracts, that it was a very  
18 successful company and had some assets and if the  
19 homeowners or someone else would have gone after that  
20 corporation, the corporate shield would have been  
21 raised as a protection. That's why individuals  
22 utilize the corporation, so that they can have the  
23 protection of that corporate shield. I think that to  
24 allow an individual to enter into a contract knowing  
25 that they're going to be relying upon that corporate

1 shield, and then at a later date when it seems a  
2 little bit equitable to an innocent third party that  
3 somehow we overlook that fact, I think that that would  
4 be inappropriate.

5 But the important thing that we need to  
6 keep in mind is that in 55.55.301, individuals  
7 performing contracting services must have a license.  
8 There is not a circumstance where Legend Builders  
9 Incorporated is exempt from that. And, you know, any  
10 time a company is reorganized, it must be licensed  
11 again by rule. Most of you are familiar with that.

12 Perhaps the most important one is  
13 58.55.501.10, that in essence contracting licenses  
14 cannot be lent out. That's a clear violation of  
15 licensing laws. And as we all know, ignorance of the  
16 law has never been a defense. So for Michael Mower to  
17 stand up and say that it was him personally entering  
18 into the contract really has to be a legal question,  
19 because it was his corporation. Had he intended  
20 himself to, under the contract, to be personally  
21 liable, his name would have been on that contract.

22 The Division is grateful for your time  
23 today, for coming and serving the public. We're  
24 grateful for that. We know that this is a difficult  
25 case for you, but we remain firm that there is no

1 jurisdiction to consider the equitable argument. The  
2 contract is unambiguous, parol evidence cannot be  
3 considered, that we in fact in this case must deny the  
4 claim because the written contract was not entered  
5 into with a licensed contractor.

6 THE COURT: Thank you.

7 Mr. Patterson, for the record, and then  
8 I'll take a final reply from you, Mr. Mitchell, in a  
9 second. Do you have an extra copy of the invoice? We  
10 are one short up here and I'll need one for the record  
11 if you have one. It's Exhibit Number 3 dated December  
12 1st.

13 Thank you, Mr. Mitchell, I appreciate  
14 that.

15 Mr. Mitchell, a final reply, inasmuch as  
16 the Claimant bears the burden of establishing  
17 qualification for payment from the fund.

18 MR. MITCHELL: The parol evidence rule is  
19 meant to keep testimony out of evidence. It's got to  
20 be timely asserted. It can't be asserted in a final  
21 argument. If I stand up and ask my client to testify  
22 to a term that's not consistent or contradicts a  
23 written agreement, it's incumbent upon opposing  
24 counsel to object to that and object to that before  
25 the evidence comes in. Once it's in, it's like the



1 horse that's out of the barn. It's too late to shut  
2 the door.

3 The parol evidence is before you. It's  
4 the truth and nobody doubts it's the truth. You can  
5 consider it as a matter of law. Furthermore, even if  
6 the parol evidence rule had been timely asserted, the  
7 parol evidence rule does not bar a party from  
8 testifying that the terms of a contract were entered  
9 into fraudulently or by mistake. There are all kinds  
10 of exceptions to the parol evidence rule.

11 This case, you could find that parol  
12 evidence rule does not apply because the parties were  
13 mistaken. They believed that a licensed contractor  
14 was doing the work. And they very well could have,  
15 with no consequence to anything anywhere in the world,  
16 entered into this contract between Mr. Mower  
17 personally and Mr. Cise personally. It was a clear  
18 mistake.

19 As far as ignorance of the law is not a  
20 defense, that's a criminal doctrine. If you go out  
21 and commit a crime, you can't go into court and say I  
22 didn't know that was a crime. But it is not a civil  
23 requirement. People go in to court and say my  
24 attorney told me to do this all the time, and the  
25 Court says okay, advice of counsel. Mistake.

1 Ignorance of the law. We'll take that into  
2 consideration. You can take that into consideration.  
3 I think the statute was meant to protect people like  
4 Mr. Cise, and should be construed to protect him. And  
5 we'll rest. Thank you.

6 THE COURT: The Board will take the matter  
7 under advisement and render its decision in this case.  
8 I would expect that will be out and I will commit to  
9 the parties that will be out in a matter of two to  
10 three weeks.

11 MR. BANKHEAD: Your Honor?

12 THE COURT: Yes?

13 MR. BANKHEAD: I have a question for the  
14 Division.

15 THE COURT: Go ahead.

16 MR. BANKHEAD: Mr. Patterson, has the  
17 Division ever initiated any kind of disciplinary  
18 action against Mr. Mower for contracting without a  
19 license in this matter?

20 MR. WEBSTER: At this point, actually,  
21 yes, Legend Builders was referred to the investigation  
22 unit. They have elected to not pursue it because  
23 Legend Builders is no longer operative. The same is  
24 true for Michael Mower Construction, Incorporated.

25 MR. BANKHEAD: What is the general

1 procedure in a matter of this kind where a person like  
2 Mr. Mower changes entities but fails to change his  
3 contractor's license? What is your usual procedure in  
4 that?

5 MR. WEBSTER: That depends on the action  
6 by the parties. If the Division becomes aware of it  
7 through investigation or complaint, it is treated as  
8 any other. It is handled by the investigations group,  
9 and they'll treat it like any other unlicensed  
10 activity. If the party contacts the Division prior to  
11 complaint or investigation, there are procedures in  
12 place whereby they can continue working if they are  
13 actively pursuing relicensure. But they must be  
14 actively pursuing relicensure.

15 MR. BANKHEAD: Thank you.

16 THE COURT: The Board will take the matter  
17 under advisement. This hearing is adjourned.

18 (Whereupon, the proceedings were concluded at 11:06  
19 a.m.)

20 \* \* \*

C E R T I F I C A T E

STATE OF UTAH                    )  
  )   ss.  
COUNTY OF SALT LAKE)

This is to certify that the foregoing adjudicative hearing held before Judge J. Steven Eklund was held in and for the State of Utah;


That the above-named proceedings taken by me in stenotype, and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 4 to 93, inclusive.

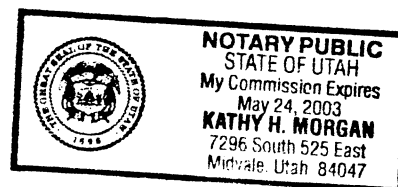
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I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Witness my hand and official seal at Salt Lake City, Utah, this 20th day of October, 2000.

My commission expires:  
May 24, 2003

  
Kathy H. Morgan, CSR, RPR



[illegible]

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**In The Matter Of:**

*Nathan Goodrich  
dba Bedrock Masonry*

---

*Hearing  
April 19, 2000*

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*Rocky Mountain Reporting Service, Inc.  
Certified Shorthand Reporters  
10 Exchange Place  
528 Newhouse Building  
Salt Lake City, UT 84111  
(801) 531-0256 FAX: (801) 531-0263*

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[1] BEFORE THE DIVISION OF OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
[2] OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH  
[3]  
[4]  
[5] IN THE MATTER OF THE LIEN )  
RECOVERY FUND CLAIM OF )  
[6] NATHAN GOODRICH, DBA )  
BEDROCK MASONRY, REGARDING ) No. LRF-1999-1210-01  
[7] THE CONSTRUCTION BY LEGEND )  
BUILDERS, INC., ON THE ) Adjudicative hearing  
[8] RESIDENCE OF DAVID AND )  
CAROL CISE. ) Judge Steven Eklund  
[9]  
[10]  
[11]  
[12] BE IT REMEMBERED THAT on the 19th day of  
[13] April, 2000, an adjudicative hearing before Judge J.  
[14] Steven Eklund was held in the above-entitled action  
[15] now pending before the above-named tribunal, and was  
[16] taken before Kathy H. Morgan, a Certified Court  
[17] Reporter and Notary Public in and for the States of  
[18] Utah and Nevada, commencing at the hour of 9:00 a.m.  
[19] of said day, at the Heber M. Wells Building, 160 East  
[20] 300 South, Room 451, City of Salt Lake, State of Utah.  
[21] That said hearing was held pursuant to  
[22] Notice.  
[23]  
[24]  
[25]

Page 2

[1]  
[2] APPEARANCES  
[3] Members of the Board  
Present: Clint Techmeyer, Chair  
[4] Grant Weller  
Steven Bankhead  
[5] Robert Burton  
Robert Arbuckle  
[6] Roy Jensen  
[7]  
Representing the  
[8] Claimant: SCOTT B. MITCHELL  
ATTORNEY AT LAW  
[9] 2469 East 7000 South  
Suite 204  
[10] Salt Lake City, Utah 84121  
[11]  
Representing the  
[12] Permissive Party: JOSEPH R. GOODMAN  
NELSON, SNUFFER & DAHLE  
[13] 10885 South State Street  
Sandy, Utah 84070  
[14]  
[15] Representing the  
Division: TONY R. PATTERSON  
[16] WILLIAM EARL WEBSTER  
ASSISTANT ATTORNEYS GENERAL  
[17] OFFICE OF THE ATTORNEY GENERAL  
160 East 300 South  
[18] Fifth Floor  
Salt Lake City, Utah 84114  
[19]  
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[20] Six members of the Residence Lien Recovery  
[21] Fund Board are present for this proceeding: The Chair  
[22] of the Board, Clint Techmeyer, Grant Weller, Steven  
[23] Bankhead, Robert Burton, Robert Arbuckle and Roy  
[24] Jensen. The Division Director, Gary Bowen, is not  
[25] with us.

[25] **MR. PATTERSON:** Yes, your Honor.

Page 6

[1] This claim comes before the Board, and as  
[2] of the Division has reviewed the claim, it is the  
[3] Division's opinion that all of the criteria necessary  
[4] to be established for the claim to be paid has been  
[5] met except for one. That one issue is whether or not  
[6] the homeowner entered into a written contract with a  
[7] licensed contractor. That will be the factual issue  
[8] that the Board will need to decide today.

[9] Now, in this claim there have been  
[10] qualified services filed with the application in the  
[11] amount of \$3,950. That's for qualified services. It  
[12] is my understanding that there will be some testimony  
[13] presented today by the permissive party, the  
[14] contractor, that will dispute that amount. But the  
[15] Division has received invoices from the Claimant that  
[16] would justify that amount. The claim also requested  
[17] \$1,365 for attorneys' fees. Based upon our rule, the  
[18] Division reduced that amount to \$987.50. The State  
[19] would — or the Division would stipulate to that  
[20] amount. The amount of costs requested is \$100. The  
[21] amount in documentation that has been received is  
[22] \$95.16. The amount of interest that was requested  
[23] with the claim application is \$335.74.

[24] The Division, in calculating interest up  
[25] through hearing, came up with the figure, which we're

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[1] willing to stipulate to, of \$433.74. The total of the  
[2] qualified services, the attorneys' fees, the costs and  
[3] interest is 4,000 — excuse me — \$5,466.40. So  
[4] we'll have to wait for the evidence that is received  
[5] on the amount of qualified services for the  
[6] verification of that, whether or not the Claimant has  
[7] already been compensated for that.

[8] The issues that will be presented will be  
[9] limited to that amount and to whether or not the  
[10] homeowner entered into a written contract with a  
[11] licensed contractor. It is the Division's position  
[12] that that did not occur, and therefore the Division is  
[13] requesting that this claim be denied.

[14] Thank you, your Honor.

[15] **THE COURT:** Mr. Mitchell, an opening  
[16] statement on behalf of the Claimant?

[17] **MR. MITCHELL:** Briefly, your Honor.

[18] There's no dispute in this case that  
[19] Legend Builders, Inc. was a party to the contract at  
[20] issue and was not licensed. There's no dispute that  
[21] Mr. Mower was the licensed contractor and wasn't a  
[22] party to the contract. I think the evidence will be  
[23] that Mr. Mower was the sole shareholder of Legend  
[24] Builders, Inc., and that all of the parties understood  
[25] that Legend Builders, Inc. was properly performing

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[1] this contract, and that nobody was aware of the fact  
[2] that Mr. Mower as the contracting party — I mean the  
[3] licensed contractor — affected the validity of the  
[4] contract or had made it otherwise improper.

[5] The fact that Mr. Mower was the licensed  
[6] party confused at least two attorneys, myself  
[7] included, and I'll just tell you briefly how that  
[8] happened. Mr. Goodrich filed a lawsuit against Legend  
[9] Builders seeking to collect the amount due. We also  
[10] — he also filed a mechanic's lien against the  
[11] property, and we sought to foreclose that and we sued  
[12] Mr. Cise as well to foreclose that lien. After we  
[13] served Mr. Cise with a summons and complaint, we got a  
[14] letter from Mr. Cise's attorney that told us that we  
[15] can't sue Mr. Cise because he's qualified under the  
[16] lien recovery statutes for protection, and they sent  
[17] us a copy of Mr. Mower's license and the other  
[18] documentation showing or purporting to show that  
[19] Mr. Cise was covered by the recovery fund. And so we  
[20] have dismissed our lawsuit against Mr. Cise, the  
[21] owner. He's an innocent owner, and he's the one who's  
[22] going to be left holding the bag if we're not  
[23] successful here today.

[24] And so we dismissed our complaint against  
[25] Mr. Mower — Mr. Cise, and went after Mr. Mower. The

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[1] Court — we filed it in bankruptcy court and the  
[2] bankruptcy court later told us that it didn't believe  
[3] it had jurisdiction and dismissed our complaint.  
[4] Before we refiled the complaint over in state court,  
[5] or before we were able to, Mr. Mower filed his own  
[6] personal Chapter 7 bankruptcy, and since he's the only  
[7] person involved in Legend Builders, Legend Builders  
[8] was nothing at that point. We did not sue him, or we  
[9] were not able to sue him or seek recovery from him.  
[10] So we filed the application with the Lien Recovery  
[11] Fund.

[12] So the question that we're going to be  
[13] asking you is really an equitable question, whether  
[14] the technicality that Legend Builders, Inc. was not  
[15] licensed when its sole shareholder-owner was the only  
[16] person involved with it was licensed, should prevent  
[17] us from recovering from the Lien Recovery Fund.  
[18] That's a question you'll be able to decide, and we're  
[19] just going to present you with the evidence.

[20] **THE COURT:** Mr. Goodman, any statement on  
[21] behalf of Legend Builders?

[22] **MR. GOODMAN:** Briefly, your Honor.

[23] I think the facts as presented are  
[24] accurate, and the only issue Mr. Mower would dispute  
[25] at this point is the valuation issue. The agreement

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[1] with Mr. Goodrich was to provide cultured stone at \$11  
[2] a square foot. Subsequent to that agreement, Mr.  
[3] Goodrich stated that he would provide natural stone  
[4] based on the same contract at the same rate. There  
[5] was no modification, no change in the terms of that  
[6] agreement. And we think — we believe he's seeking to  
[7] recover additional monies to which he's not entitled,  
[8] and that he should be only allowed to recover what he  
[9] originally contracted for, \$11 per square foot. The  
[10] licensing issue will be presented as already argued by  
[11] previously counsel, but the valuation issue we'd have  
[12] some dispute with.

[13] **THE COURT:** Counsel and the Court have  
[14] reviewed prior to the commencement of the hearing the  
[15] sequence of testimony in this matter, and given that  
[16] the preeminent issue as to whether this claim ought to  
[17] be granted or not involves the licensure issue,  
[18] licensure status of the corporation, vis-a-vis Mr.  
[19] Mower, it was agreed upon that initial testimony  
[20] should be presented to the Board to clarify for the  
[21] Board the factual relationship that exists between  
[22] those two entities in terms of that licensure issue.

[23] Under those circumstances, Mr. Goodman, I  
[24] think it might be most appropriate, then, if Mr. Mower  
[25] would be the first witness, and perhaps you can direct

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[1] the initial questions to him to clarify that for the  
[2] Board, if that's all right.

[3] Mr. Mower, could I ask you to come up  
[4] here, please.

[5] Would you raise your right hand.

[6] (The witness was sworn.)

[7] Please be seated. Mr. Goodman?

[8] **DIRECT EXAMINATION**

[9] **BY MR. GOODMAN:**

[10] **Q:** Would you state your full name for the  
[11] record, Mr. Mower.

[12] **A:** Michael Allen Mower.

[13] **Q:** What's your current address?

[14] **A:** 1639 East Heatherwood Circle.

[15] **Q:** And you were the owner of Legend Builders  
[16] Incorporated, correct?

[17] **A:** Correct.

[18] **Q:** Were you the only shareholder of that  
[19] corporation?

[20] **A:** I was.

[21] **Q:** Were you an officer of that corporation?

[22] **A:** Yes.

[23] **Q:** Did you make all decisions regarding the  
[24] business of Legend Builders?

[25] **A:** I did.

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[1] **Q:** Was Legend Builders, at the time you  
[2] contracted with David Cise to build his home, was  
[3] Legend Builders Incorporated a licensed contractor in  
[4] the State of Utah?

[5] **A:** It was not.

[6] **Q:** Were you personally a licensed contractor  
[7] in the State of Utah?

[8] **A:** Yes, I was.

[9] **Q:** Are you a licensed contractor now?

[10] **A:** I've not renewed yet.

[11] **Q:** Is Legend Builders currently in business?

[12] **A:** No.

[13] **MR. GOODMAN:** No further questions. I  
[14] reserve the right to continue.

[15] **THE COURT:** Certainly. Mr. Mitchell, any  
[16] questions?

[17] **CROSS-EXAMINATION**

[18] **BY MR. MITCHELL:**

[19] **Q:** Mr. Mower, who were the other officers? I  
[20] assume you were an officer of Legend Builders?

[21] **A:** Uh-huh (affirmative).

[22] **Q:** What was your capacity?

[23] **A:** President.

[24] **Q:** Were there other officers?

[25] **A:** Not at that point.

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[1] **Q:** When was Legend Builders formed?  
[2] Incorporated.

[3] **A:** January of '98, I believe.

[4] **Q:** After you incorporated, did you ever hold  
[5] any annual meetings?

[6] **A:** No.

[7] **Q:** Did you ever hold any shareholders  
[8] meetings?

[9] **A:** No.

[10] **Q:** Did you ever hold any directors meetings?

[11] **A:** No.

[12] **Q:** Did you ever elect directors?

[13] **A:** No.

[14] **Q:** Did you ever elect officers?

[15] **A:** No.

[16] **Q:** Did you keep books and records, corporate  
[17] minute books and record?

[18] **A:** No.

[19] **MR. GOODMAN:** Nothing further, your Honor.

[20] **THE COURT:** Mr. Patterson?

[21] **CROSS-EXAMINATION**

[22] **BY MR. PATTERSON:**

[23] **Q:** Mr. Mower, isn't it correct that Legend  
[24] Builders, Inc. actually is a corporation that had  
[25] changed its name and that it was originally Michael

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[1] Mower, Inc.?  
[2] **A:** Michael Mower Construction, Inc.  
[3] **Q:** Michael Mower Construction. And when  
[4] was Michael Mower Construction, Inc. first  
[5] incorporated?  
[6] **A:** I think the year before, January of '97.  
[7] I'm not exactly sure.  
[8] **Q:** Isn't it true that it would be more like  
[9] '94 when it was incorporated, and the corporate  
[10] change took place in '97?  
[11] **A:** I'd have to look at the records.  
[12] Initially I opened the company as Michael Mower  
[13] Construction. Then I changed it to Michael Mower  
[14] Construction Incorporated, and I don't know what the  
[15] dates were.  
[16] **Q:** Isn't it true that contracts that you  
[17] entered into —  
[18] (Discussion held off the record.)  
[19] **MR. PATTERSON:** No further questions, your  
[20] Honor.  
[21] **THE COURT:** Mr. Goodman, anything further  
[22] for this witness?  
[23] **MR. GOODMAN:** No, your Honor.  
[24] **THE COURT:** Mr. Mitchell?  
[25]

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[1] agreement on employment.  
[2] **Q:** Did you have corporate minute books?  
[3] **A:** No.  
[4] **Q:** Did you keep any kind of corporate records  
[5] at all?  
[6] **A:** Yeah, I kept records.  
[7] **Q:** What kind of records did you keep?  
[8] **A:** We have Articles of Incorporation and the  
[9] stuff we had to file to become incorporated.  
[10] **Q:** After the initial incorporation, did you  
[11] keep any other records? Did you make any resolutions?  
[12] Did you have any formal meeting records, anything like  
[13] that?  
[14] **A:** Nothing formal.  
[15] **MR. MITCHELL:** Okay. Nothing further,  
[16] your Honor.  
[17] **THE COURT:** Mr. Goodman?  
[18] **MR. GOODMAN:** Nothing further, your  
[19] Honor.  
[20] **THE COURT:** Mr. Patterson?  
[21] **MR. PATTERSON:** Nothing, your Honor.  
[22] **THE COURT:** Any questions by the Board of  
[23] this witness? Mr. Techmeyer?  
[24] **MR. TECHMEYER:** I'll pass right now.  
[25] **THE COURT:** Mr. Weller?

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[1] **REXCROSS-EXAMINATION**  
[2] **BY MR. MITCHELL:**  
[3] **Q:** Mr. Mower, if I were to ask you the same  
[4] questions about shareholders meetings, directors  
[5] meetings, annual meetings, minute books, things like  
[6] that with respect to Michael Mower, Inc., would they  
[7] be different than with respect to Legend Builders,  
[8] Inc.?  
[9] **A:** They would.  
[10] **Q:** Tell us about that.  
[11] **A:** I had a Vice-President for Michael Mower  
[12] Construction.  
[13] **Q:** Who was the Vice-President for Michael  
[14] Mower Construction?  
[15] **A:** Michael Roberts.  
[16] **Q:** Did you have annual shareholders meetings?  
[17] **A:** No.  
[18] **Q:** Did you have directors meetings?  
[19] **A:** No.  
[20] **Q:** When you entered into a contract or did  
[21] business, did you vote? Did you have any votes of  
[22] directors?  
[23] **A:** No.  
[24] **Q:** Did you elect officers?  
[25] **A:** There wasn't an election. There was an

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[1] **MR. WELLER:** No, not at this time.  
[2] **THE COURT:** Mr. Arbuckle?  
[3] **MR. ARBUCKLE:** No.  
[4] **THE COURT:** Mr. Jensen?  
[5] **MR. JENSEN:** Yes, I have one. Mr. Mower,  
[6] were you aware that when you became incorporated as  
[7] Legend Builders that it was a violation of state law  
[8] not to also have your licensure status changed?  
[9] **THE WITNESS:** No.  
[10] **THE COURT:** Mr. Burton?  
[11] **MR. BURTON:** When you entered into the  
[12] contract with the homeowner, did you think that the  
[13] license that you held covered Legend Builders?  
[14] **THE WITNESS:** I did.  
[15] **MR. TECHMEYER:** What was his response?  
[16] **THE COURT:** He said he did.  
[17] **MR. BURTON:** I had another question that  
[18] was brought up in opening statements on the  
[19] bankruptcies that were filed. Were there two  
[20] bankruptcies or one?  
[21] **THE WITNESS:** I filed my — I filed one  
[22] bankruptcy is all.  
[23] **MR. BURTON:** And that was on behalf of  
[24] yourself personally?  
[25] **THE WITNESS:** Yes.



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[1] **MR. BURTON:** Did you ever file a  
[2] bankruptcy on behalf of Legend Builders, Inc.?  
[3] **THE WITNESS:** We just closed the company.  
[4] **MR. BURTON:** The company has no assets?  
[5] **THE WITNESS:** Correct.  
[6] **MR. BURTON:** Thanks.  
[7] **THE COURT:** Mr. Bankhead?  
[8] **MR. BANKHEAD:** I have two questions. Why  
[9] did you change the entity from Michael Mower as  
[10] proprietor to Michael Mower Construction, Inc.? When  
[11] did that occur and what was your purpose?  
[12] **THE WITNESS:** I was advised that it would  
[13] be — as a construction company that it would be  
[14] better off as a corporation.  
[15] **MR. BANKHEAD:** And why did you change the  
[16] name to Legend Builders?  
[17] **THE WITNESS:** I was anticipating going  
[18] further with Michael Roberts as a shareholder and was  
[19] going to change the company name so it was not just  
[20] representative of me. But that didn't happen.  
[21] **MR. BANKHEAD:** And was that — did you  
[22] file new Articles of Incorporation or was that a name  
[23] change only?  
[24] **THE WITNESS:** I think it was just a name  
[25] change only.

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[1] **MR. BANKHEAD:** No further questions.  
[2] **THE COURT:** Any other questions by the  
[3] Board? Yes, Mr. Arbuckle?  
[4] **MR. ARBUCKLE:** Can I ask about the rock  
[5] pricing? You said that it was \$11 a square foot for  
[6] rock originally. Was that based on natural rock or  
[7] cultured rock?  
[8] **THE WITNESS:** That was based on cultured.  
[9] **MR. ARBUCKLE:** Then the subcontractor,  
[10] what kind of arrangement did — he said he would do  
[11] natural rock for the same price?  
[12] **THE WITNESS:** Yes.  
[13] **MR. ARBUCKLE:** What kind of natural rock?  
[14] **THE WITNESS:** Same style. It was a  
[15] riverbed cobble.  
[16] **MR. ARBUCKLE:** And that's not — that \$11  
[17] a square foot is not too low for that?  
[18] **THE WITNESS:** It's lower than normal,  
[19] yeah.  
[20] **MR. ARBUCKLE:** What would be a normal  
[21] price?  
[22] **THE WITNESS:** Probably around \$15 to \$17,  
[23] depending on what you use.  
[24] **MR. ARBUCKLE:** And the job was performed?  
[25] **THE WITNESS:** Correct.

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[1] **MR. ARBUCKLE:** And you were happy with  
[2] it?  
[3] **THE WITNESS:** I was happy with the end  
[4] result, yes.  
[5] **MR. ARBUCKLE:** And you paid \$2,500 up  
[6] front?  
[7] **THE WITNESS:** Yes.  
[8] **MR. ARBUCKLE:** And the total contract, I  
[9] don't know how many square feet there was. There was  
[10] supposed to be 2,600 square feet. \$3,900 was supposed  
[11] to be the total?  
[12] **THE COURT:** Mr. Mower, do you know what  
[13] the square footage was for that?  
[14] **THE WITNESS:** I forget. He had it on his  
[15] invoice.  
[16] **MR. ARBUCKLE:** So there was an invoice for  
[17] \$14, and you said no, it was \$11?  
[18] **THE WITNESS:** That's right.  
[19] **THE COURT:** Any other questions? Mr.  
[20] Techmeyer?  
[21] **MR. TECHMEYER:** Just following that same  
[22] vein just for clarification, what was the reason or  
[23] motivation to replace the cultured rock with natural  
[24] if it would have a higher price? Was there a change  
[25] order, anything signed, or was this just a verbal

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[1] agreement that you had?  
[2] **THE WITNESS:** It was a verbal agreement.  
[3] The initial \$2,500 was paid to Bedrock Masonry as a  
[4] down payment for the materials, and the materials  
[5] could be ordered through the supplier and delivered to  
[6] the job. If my memory serves me right, that was in  
[7] July, and months later we still hadn't received the  
[8] rock. Nathan Goodrich repeatedly told me that  
[9] although he had paid the money to the vendor, they  
[10] were just bringing in small partial shipments of what  
[11] we needed, so he wasn't going to have it sent up to  
[12] the job until he had a full order.  
[13] And that was the story for months, and  
[14] then finally he said, because it had taken so long, he  
[15] said why don't I just do the natural stone, and we'll  
[16] just do it for the same price. And I said well, I'll  
[17] approve it with the customer, and if it's okay with  
[18] him it's okay with me. And the natural stone is what  
[19] the customer wanted originally anyway, but we cut back  
[20] because it was more expensive. So he said let's go  
[21] ahead with that. So it was basically — I felt it was  
[22] a time issue, and the subcontractor feeling pressure  
[23] because it was taking so long.  
[24] It's important to note, I think, that  
[25] later, checking with the supplier, the supplier was

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[1] never given the \$2,500 as a down payment toward  
[2] materials.  
[3] **THE COURT:** Anything else? Any other  
[4] questions by the Board of this witness?  
[5] Mr. Goodman, anything further for Mr.  
[6] Mower?  
[7] **MR. GOODMAN:** Nothing further, your Honor.  
[8] **THE COURT:** Mr. Mitchell?  
[9] **MR. MITCHELL:** Nothing further, your  
[10] Honor.  
[11] **THE COURT:** Mr. Patterson?  
[12] **MR. PATTERSON:** Yes. I believe we've  
[13] gotten into this issue and I would like to explore it  
[14] a little bit further, if that would be all right.  
[15] It's my understanding that — well, your Honor, may I  
[16] approach the witness with a document?  
[17] **THE COURT:** Go ahead.  
[18] **RECROSS-EXAMINATION**  
[19] **BY MR. PATTERSON:**  
[20] **Q:** Would you please review this, Mr. Mower?  
[21] **MR. PATTERSON:** May I approach, your  
[22] Honor?  
[23] **THE COURT:** Yes.  
[24] **BY MR. PATTERSON:**  
[25] **Q:** Do you recognize this document?

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[1] **A:** I do.  
[2] **Q:** Could you please explain what it is?  
[3] **A:** It's an invoice from Bedrock Masonry.  
[4] **Q:** To?  
[5] **A:** To Legend Builders.  
[6] **Q:** Did you receive this?  
[7] **A:** I did.  
[8] **Q:** And what was the purpose for this invoice?  
[9] **A:** It was a final invoice for the work done  
[10] on the job.  
[11] **Q:** And does it identify the particular client  
[12] that you were referring to?  
[13] **A:** The vendor, Bedrock Masonry?  
[14] **Q:** No, the homeowner, David Cise.  
[15] **A:** It does.  
[16] **Q:** Does it identify how many square feet of  
[17] rock?  
[18] **A:** Yes.  
[19] **Q:** And that is 450 feet?  
[20] **A:** Yes, that's what it says, yes.  
[21] **Q:** And you notice they billed it at \$14 per  
[22] square foot?  
[23] **A:** I do.  
[24] **Q:** Did you discuss that with Bedrock Masonry  
[25] when you received this invoice?

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[1] **A:** I did.  
[2] **Q:** And what did you inform Bedrock?  
[3] **A:** That our agreement was \$11 a square foot.  
[4] **Q:** What was the response you received?  
[5] **A:** I don't think I ever got a response back.  
[6] My communication with Nathan at that point was through  
[7] letters.  
[8] **Q:** Through who?  
[9] **A:** Letters.  
[10] **Q:** Letters? What was represented to you in  
[11] the letters?  
[12] **A:** I never received a letter back.  
[13] **Q:** You just wrote letters to Bedrock and  
[14] never received any response?  
[15] **A:** Right.  
[16] **Q:** Do you believe that this bill has been  
[17] paid in full, or is it your opinion that this has been  
[18] paid in full?  
[19] **A:** I believe the amounts are inaccurate. If  
[20] the amounts were accurate it would be paid in full.  
[21] **Q:** What is inaccurate about it?  
[22] **A:** The \$14 per square foot.  
[23] **Q:** As far as the steel and draw, you agree  
[24] with everything else?  
[25] **A:** Well, I wouldn't have expected an extra

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[1] fee for steel. I mean, normally when you get a bid  
[2] for masonry, they include the steel for poles or  
[3] whatever. It's not an extra cost.  
[4] **Q:** So if it was billed at \$11 per square  
[5] foot, what is your basis for your opinion that the  
[6] invoice was paid in full?  
[7] **A:** The initial draw of \$2,500, and then  
[8] services that I provided to Bedrock Masonry for the  
[9] balance.  
[10] **Q:** Under what conditions did you provide  
[11] those services?  
[12] **A:** I worked with Nathan Goodrich installing  
[13] stone on a couple of different properties.  
[14] **Q:** Did you work as an independent contractor  
[15] or as an employee?  
[16] **A:** As an employee.  
[17] **Q:** And in employment are you saying that you  
[18] were underpaid or not paid for your services?  
[19] **A:** Not fully paid.  
[20] **Q:** Not fully paid? What dates were you  
[21] employed by Bedrock Masonry?  
[22] **A:** I'm going to have to be guessing. It was  
[23] September through October.  
[24] **Q:** Of which year?  
[25] **A:** '98.

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[1] Q: '98. And during that time period, in the  
[2] past have you calculated approximately what amount  
[3] that you believe you were not paid?  
[4] A: Yeah, verbally on the phone with Nathan.  
[5] Q: What is that amount?  
[6] A: The total amount was 38, 38-something.  
[7] I've got notes on that.  
[8] Q: \$3,800?  
[9] A: Yes, minus the \$500 payment, plus a \$300  
[10] loan. I think the total, the balance owed was \$2,880.  
[11] Q: \$2,800. Do you recall specifically the  
[12] amounts that you were paid by Bedrock while you were  
[13] employed with them?  
[14] A: As I recall, \$500.  
[15] Q: That was the total payments received?  
[16] A: (The witness nodded.)  
[17] Q: Was it understood between you and Bedrock  
[18] Masonry that you were working to pay this invoice? Is  
[19] that the conditions of your compensation?  
[20] A: No.  
[21] Q: How is it that you believe that those  
[22] funds that — or the money you believe you were  
[23] entitled to for your employment should offset this  
[24] particular invoice?  
[25] A: I have to — initially when I went to work

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[1] with Bedrock it was as an employee. I think, however,  
[2] when things fell apart I think he ended up sending me  
[3] a 1099 as a contractor instead of an employee. I'd  
[4] have to look at my records to find out about that.  
[5] But how I justified it? Was that your question?  
[6] Q: Yes.  
[7] A: Well, my justification is if someone owes  
[8] you money and you owe them money, that you would take  
[9] the two and if there was a balance left over, then you  
[10] would pay for the balance left over. If there was a  
[11] credit, then they'd still be owing you money.  
[12] Q: You said you received a 1099 at the end of  
[13] the year?  
[14] A: Seems like it. I don't think it was a  
[15] W-2.  
[16] Q: Why or what are — when you first entered  
[17] into your employment relationship with Bedrock  
[18] Masonry, did you have a specific conversation  
[19] regarding your status as an employee versus a  
[20] subcontractor?  
[21] A: Yeah. It was actually more — when I  
[22] started working with Nathan it was — his phrase was  
[23] "a partner without being a partner." Nathan one day  
[24] told me that he needed or he was looking for someone  
[25] to help him with his work, and he couldn't keep up

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[1] with the amount of work that he had and it was hard to  
[2] find good help. And I was thinking at that time of  
[3] getting out of general contracting. And so we started  
[4] discussing it and we decided to give it a try to see  
[5] how it would go.  
[6] Things didn't pan out. He didn't get what  
[7] he expected from me and I didn't get what I expected  
[8] from him, so that we didn't stay together very long.  
[9] But I was — he was going to pay me \$7 a square foot  
[10] for what I installed, then for the — when I picked up  
[11] a lot of rook and stuff like that, his discussions  
[12] were that you can easily make \$50 an hour while you're  
[13] doing this work.  
[14] Q: Did you ever receive an explanation from  
[15] Bedrock as to why you received a 1099 rather than a  
[16] W-2?  
[17] A: I didn't.  
[18] Q: When you received your check, you said you  
[19] received a \$500 check; is that correct?  
[20] A: While we were working?  
[21] Q: Yes. That was for wages?  
[22] A: It was for compensation. I don't know  
[23] whether I'd call it wages or, you know, whatever it  
[24] was. It was for work that I did.  
[25] Q: And did it have any withholding taxes?

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[1] Was there anything else like that, you know, those  
[2] factors that would indicate that you were an employee?  
[3] A: No.  
[4] Q: Did you question that at that time?  
[5] A: No.  
[6] Q: Do you still feel that you were working as  
[7] an employee for Bedrock Masonry, or do you believe it  
[8] was as an independent contractor?  
[9] A: Well, my intention to go to work for him  
[10] was — would have been as a partner so that profits  
[11] that were made with the company were shared.  
[12] Q: Did you receive any profits?  
[13] A: No.  
[14] Q: Did you participate in the business  
[15] decisions of Bedrock Masonry?  
[16] A: It was — that was the initial idea. That  
[17] was one of the reasons why I became frustrated.  
[18] Q: Did you ever participate in those  
[19] decisions?  
[20] A: I participated, but, you know, my  
[21] participation was largely ignored.  
[22] Q: Did you obtain any ownership of the  
[23] company?  
[24] A: No.  
[25] Q: Did you purchase stock or sign a contract

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[1] to pay for it?  
[2] **A:** No.  
[3] **Q:** Did you pay anything for ownership  
[4] interest in the company?  
[5] **A:** No.  
[6] **MR. PATTERSON:** Thank you, your Honor.  
[7] **THE COURT:** Mr. Goodman, any questions?  
[8] **MR. GOODMAN:** I think all the testimony  
[9] from my client has been elicited, your Honor.  
[10] **THE COURT:** Mr. Mitchell?  
[11] **RECROSS-EXAMINATION**  
[12] **BY MR. MITCHELL:**  
[13] **Q:** I'm a little confused. Were you going to  
[14] be a partner with Mr. Goodrich, or were you going to  
[15] be an employee, or how was that to work?  
[16] **A:** It was his — I was not going to go to  
[17] work for a company as an employee that didn't benefit  
[18] from my contribution to the company. So my word for  
[19] it would be a partner, a shareholder, someone who  
[20] would benefit from the — from my contribution. His  
[21] wording was "a partner but not a partner."  
[22] **Q:** What did that mean?  
[23] **A:** That meant that he had had bad experiences  
[24] with partners in the past and so he didn't want to —  
[25] he didn't want to call it a partnership, but it was

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[1] really a partnership.  
[2] **Q:** So what made you think you were going to  
[3] be an employee?  
[4] **A:** I never thought of it as an employee. At  
[5] the end of the thing Nathan was mad, and so it's hard  
[6] to — that's what I mean. I was confused on how it  
[7] was going to be.  
[8] **Q:** Well, let me ask you this: You had  
[9] employees for Legend Builders; is that correct?  
[10] **A:** That's correct.  
[11] **Q:** And you had employees for Michael Mower,  
[12] Inc.; is that correct?  
[13] **A:** That's correct.  
[14] **Q:** Have you had employees for other  
[15] businesses that you've owned?  
[16] **A:** When I was Michael Mower Construction.  
[17] **Q:** Now, when you have employees, you have  
[18] them do things like fill out W-4s when they first  
[19] start working for you, and then you take money out of  
[20] their paychecks at the end of the year and give them  
[21] W-2s; is that correct?  
[22] **A:** That's correct.  
[23] **Q:** You weren't surprised in this case when  
[24] you got that 1099 at the end of the year, were you?  
[25] **A:** Not overly surprised.

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[1] **Q:** You didn't expect to get a W-2, did you?  
[2] **A:** I wasn't expecting one way or the other.  
[3] I didn't know how he was going to handle it. Actually  
[4] I was surprised only that I received something.  
[5] **Q:** Now, I'm a little confused as to you think  
[6] that if the numbers were proper on this invoice, in  
[7] other words, if the \$11 per square foot was right,  
[8] that Mr. Goodrich would have been paid; is that  
[9] correct?  
[10] **A:** Compensated.  
[11] **Q:** Okay, compensated. In full?  
[12] **A:** Uh-huh (affirmative).  
[13] **Q:** Now, tell us about that. Now, you paid  
[14] \$2,500; is that right?  
[15] **A:** Correct.  
[16] **Q:** Did you pay anything else?  
[17] **A:** No. I did work for Nathan.  
[18] **Q:** What did you do?  
[19] **A:** I did work for Nathan.  
[20] **Q:** And did you have some kind of agreement  
[21] with Nathan with respect to that work that would go  
[22] towards this invoice?  
[23] **A:** No.  
[24] **Q:** Now, isn't it true that Mr. Goodrich sent  
[25] you this invoice, or one like it, on various occasions

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[1] but you just ignored it?  
[2] **A:** Yes, it is.  
[3] **Q:** And isn't it true that I sent you a letter  
[4] in February of last year demanding payment for this  
[5] invoice and interest that you ignored as well?  
[6] **A:** I don't believe I did ignore your letters.  
[7] I've spoken to you several times.  
[8] **Q:** You have?  
[9] **A:** Yes.  
[10] **Q:** About what?  
[11] **A:** About this case.  
[12] **Q:** What have you told me?  
[13] **A:** I've told you this very situation, that he  
[14] owes more money. I believe that I sent you the same  
[15] letter that I sent Earl Webster, and I communicated  
[16] with you on this.  
[17] **Q:** Verbally or in writing?  
[18] **A:** Both.  
[19] **Q:** Do you have copies? Other than the  
[20] pleadings you filed in this case, do you have copies  
[21] of any of that?  
[22] **A:** The letter that I sent to Earl, I believe  
[23] I sent a copy of that to you. And I'd have to look at  
[24] my records to see if I sent anything else to you.  
[25] **Q:** Did you bring any of these notes or any of

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[1] these records that you've referred to with you to this  
[2] hearing today?  
[3] **A:** I left those with my attorney.  
[4] **Q:** When you sent a copy, when you sent this  
[5] letter that's been referred to as a pleading, and it's  
[6] dated January 12, 2000, when you sent that in to the  
[7] Division, did you send a copy of that to me?  
[8] **A:** I believe I did.  
[9] **Q:** Where else did you send it?  
[10] **A:** I tried to get ahold of — to find out how  
[11] I could get ahold of Nathan to send a copy to him, and  
[12] I probably would have given a copy to my attorney.  
[13] **Q:** So are you testifying that you sent a copy  
[14] to Mr. Goodman?  
[15] **A:** No.  
[16] **Q:** But you sent a copy to me?  
[17] **A:** I believe I did.  
[18] **Q:** And if I dispute that and I say I never  
[19] received that and never saw it before this morning,  
[20] how would you respond to that?  
[21] **A:** I'd say I believe that I sent it to your  
[22] office.  
[23] **MR. MITCHELL:** Nothing further, your  
[24] Honor.  
[25] **THE COURT:** Mr. Patterson, were you moving

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[1] for the admission of the invoice?  
[2] **MR. PATTERSON:** Yes, your Honor. I  
[3] thought it would be more appropriate coming from the  
[4] Claimant, but the Division would move that that be  
[5] admitted as evidence.  
[6] **THE COURT:** Any objection, Mr. Mitchell?  
[7] **MR. MITCHELL:** No objection, your Honor.  
[8] **THE COURT:** Mr. Goodman?  
[9] **MR. GOODMAN:** No objection, your Honor.  
[10] **THE COURT:** As identified it is received  
[11] as Exhibit Number 3, and will be provided for the  
[12] Board. Any further testimony from this witness, Mr.  
[13] Goodman?  
[14] **MR. GOODMAN:** I have a few questions.  
[15] **REDIRECT EXAMINATION**  
[16] **BY MR. GOODMAN:**  
[17] **Q:** Looking at that invoice that was just  
[18] admitted, what date is that invoice, Mike?  
[19] **A:** 12/1 of '98.  
[20] **Q:** Is this the first time you got notice of  
[21] the \$14 per square foot on this project?  
[22] **A:** I would suppose that it was.  
[23] **Q:** And this is after you had quit working for  
[24] Nathan Goodrich, correct?  
[25] **A:** Correct.

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[1] **Q:** And did you have a falling out with him?  
[2] **A:** We did.  
[3] **MR. GOODMAN:** Nothing further.  
[4] **THE COURT:** Mr. Mitchell?  
[5] **MR. MITCHELL:** Nothing further, your  
[6] Honor.  
[7] **THE COURT:** Mr. Patterson?  
[8] **MR. PATTERSON:** No, your Honor.  
[9] **THE COURT:** Mr. Mower, you're excused.  
[10] Thank you.  
[11] **MR. BURTON:** Your Honor, I had a question.  
[12] **THE COURT:** Oh, I'm sorry. Yes, go ahead,  
[13] Mr. Burton.  
[14] **MR. BURTON:** You indicated that you filed  
[15] bankruptcy; is that correct?  
[16] **THE WITNESS:** That is correct.  
[17] **MR. BURTON:** And in the bankruptcy papers  
[18] did you list all your assets and all your liabilities?  
[19] **THE WITNESS:** I did.  
[20] **MR. BURTON:** Did you list an account  
[21] receivable with Mr. Goodrich or did you list him  
[22] assuming that he owed you money?  
[23] **THE WITNESS:** I think that — I can't  
[24] remember how I listed him. I'd have to check the  
[25] documents. But I probably — I'd just have to look

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[1] because I can't remember.  
[2] **MR. BURTON:** Have you ever made a claim  
[3] against him to pay this excess compensation?  
[4] **THE WITNESS:** When I got notice that they  
[5] were suing me for the money and asking me for  
[6] responses to their claims, I filed a counterclaim for  
[7] what I was saying he owed.  
[8] **MR. BURTON:** How much did you allege in  
[9] the counterclaim it was?  
[10] **THE WITNESS:** Seems like it was about \$400  
[11] or \$500 more that he actually owed me. I don't have  
[12] the records in front of me, so I'm just guessing. But  
[13] it was more than he paid me.  
[14] **MR. BURTON:** Thanks.  
[15] **THE COURT:** Any other questions by the  
[16] Board? Yes, Mr. Arbuckle?  
[17] **MR. ARBUCKLE:** I'm interested in the  
[18] timing of this invoice. When was the first invoice  
[19] given to you, the \$2,500 that you knew that was going  
[20] to happen?  
[21] **THE WITNESS:** If I recall, it was in  
[22] July.  
[23] **MR. ARBUCKLE:** So you knew what the price  
[24] was going to be in July?  
[25] **THE WITNESS:** The \$11 a square foot. It

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[1] wasn't Nathan's practice — and I had dealt with  
[2] Nathan on several jobs, so I, you know, I felt  
[3] comfortable that he was going to be honorable on the  
[4] thing. But he didn't like to give a solid bid. He  
[5] just said well, I'll give you a square footage and  
[6] then we'll measure it up at the end, and the square  
[7] footage price agreed to was \$11.  
[8] **MR. ARBUCKLE:** That was in July, and you  
[9] paid him \$2,500, again?  
[10] **THE WITNESS:** Well, the agreement was  
[11] prior to July. We paid \$2,500 in July.  
[12] **MR. ARBUCKLE:** And then the job was  
[13] completed when?  
[14] **THE WITNESS:** Was finally completed in  
[15] December.  
[16] **MR. ARBUCKLE:** The job was completed in  
[17] December of what year?  
[18] **THE WITNESS:** '98.  
[19] **MR. ARBUCKLE:** I'm confused. This invoice  
[20] is dated December 1 of '98. Did you go to work for  
[21] him — you went to work for him between July and  
[22] December of '98?  
[23] **THE WITNESS:** Yes.  
[24] **MR. ARBUCKLE:** So you were on pretty good  
[25] terms during those times?

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[1] **THE WITNESS:** Correct.  
[2] **MR. ARBUCKLE:** And then when did you leave  
[3] his employ?  
[4] **THE WITNESS:** I think it was in October.  
[5] **MR. ARBUCKLE:** You left his employ in  
[6] October. But this job from Cise was not even done  
[7] until December?  
[8] **THE WITNESS:** That's right. When I  
[9] started working with Nathan I indicated to him that I  
[10] was going to have to make sure — before I could start  
[11] working full time with him that I was going to have to  
[12] finish the Cise project. So — on a part-time basis  
[13] until that was done.  
[14] **MR. ARBUCKLE:** So was there any  
[15] understanding between you two between July and October  
[16] or December what the price was going to be? You knew  
[17] about the square footage by then, right?  
[18] **THE WITNESS:** Yeah. I just — Nathan  
[19] always measured his own at the end, and if it seemed  
[20] out of line, you know, I would question it. But it  
[21] didn't seem out of line, the square footage. The only  
[22] things done different was the price per square foot.  
[23] **MR. ARBUCKLE:** So 450 square feet is a  
[24] reasonable number?  
[25] **THE WITNESS:** I think so.

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[1] **MR. ARBUCKLE:** Nothing further.  
[2] **THE COURT:** Go ahead, Mr. Bankhead.  
[3] **MR. BANKHEAD:** You indicated that your  
[4] understanding on the basis of your employment is that  
[5] you would be paid \$7 a square foot for installation of  
[6] rock work?  
[7] **THE WITNESS:** That's correct.  
[8] **MR. BANKHEAD:** Do you know how many hours  
[9] you worked in September and October or during this  
[10] time?  
[11] **THE WITNESS:** I didn't keep track of  
[12] hours.  
[13] **MR. BANKHEAD:** Do you know how many square  
[14] feet you installed?  
[15] **THE WITNESS:** Yes.  
[16] **MR. BANKHEAD:** How many?  
[17] **THE WITNESS:** It's on the note pad that I  
[18] don't have with me.  
[19] **MR. BANKHEAD:** Approximately, do you  
[20] know?  
[21] **THE WITNESS:** All I know is that the  
[22] square footage plus the time spent gathering the stone  
[23] and materials and so forth totaled \$3,300.  
[24] **MR. BANKHEAD:** And if I understood  
[25] correctly, you indicated that you thought you would be

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[1] paid \$50 an hour for picking up stone? Is that — did  
[2] I understand that correctly?  
[3] **THE WITNESS:** Yeah. When we were  
[4] gathering stone, kind of — because I was — Nathan  
[5] wanted me to work with him to try and help organize  
[6] him a bit and to offer what expertise I could to help  
[7] his business run more efficiently. And we'd drive out  
[8] to, you know, Stansbury Island picking up rock, and so  
[9] I would question him and say, "Is this worth our time  
[10] to do this?"  
[11] And he said, "When you take and pick up  
[12] the stone, deliver it, we're looking at about \$50 an  
[13] hour for this work." So at that point then I thought  
[14] well, if we're talking about \$50 an hour, then it's  
[15] worth doing this. If you're only making \$10 an hour,  
[16] you probably ought to hire someone else to do it.  
[17] **THE COURT:** Any other questions by the  
[18] Board of this witness?  
[19] Mr. Mitchell?  
[20] **MR. MITCHELL:** Just a couple of follow-up  
[21] questions, your Honor.  
[22] **FURTHER RECROSS-EXAMINATION**  
[23] **BY MR. MITCHELL:**  
[24] **Q:** You were aware that Mr. Goodrich was  
[25] forced to file a Chapter 13 bankruptcy; is that



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[1] correct?  
[2] A: I don't know any of the — all I know is  
[3] that he filed it.  
[4] Q: And you were given notice; is that right?  
[5] A: I was.  
[6] Q: And you never filed a claim in that  
[7] bankruptcy; isn't that correct?  
[8] A: I did not.  
[9] Q: And you were notified later by the  
[10] bankruptcy court that you had no claim as a result of  
[11] that; is that right?  
[12] A: I don't recall.  
[13] MR. MITCHELL: Nothing further, your  
[14] Honor.  
[15] THE COURT: Mr. Goodman, anything further?  
[16] MR. GOODMAN: Nothing further, your Honor.  
[17] THE COURT: Mr. Patterson?  
[18] MR. PATTERSON: Nothing further, your  
[19] Honor.  
[20] THE COURT: This witness is excused.  
[21] Thank you, Mr. Mower.  
[22] Mr. Mitchell, any testimony on behalf of  
[23] the Claimant?  
[24] MR. MITCHELL: Yes. I believe Mr.  
[25] Goodrich will testify.

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[1] THE COURT: Okay.  
[2] (The witness was sworn.)  
[3] THE COURT: Mr. Mitchell?  
[4] MR. MITCHELL: Thank you, your Honor.  
[5] DIRECT EXAMINATION  
[6] BY MR. MITCHELL:  
[7] Q: Mr. Goodrich, I'm going to show you Mr.  
[8] Mower's letter dated January 12 and ask if you've ever  
[9] seen that before this morning.  
[10] A: No, I've never seen this.  
[11] Q: Have you had an opportunity to review that  
[12] this morning?  
[13] A: Yeah, I've looked at it, yes.  
[14] Q: I'd like you to tell us about your  
[15] relationship with Mr. Mower, how it started and how it  
[16] progressed, and I'll interrupt you from time to time.  
[17] I've never seen that letter before, either, so I'm not  
[18] as prepared as I wanted to be, and I'd just like you  
[19] to give us a narrative to begin with.  
[20] A: Well, I contacted someone with the stone  
[21] supplier in Eastern Utah, and he knew some guy that  
[22] needed some work done. So I called him and we struck  
[23] up a relationship that way. He needed a stone mason  
[24] and needed some work on his house, so we did it.  
[25] That's how it started.

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[1] Q: When was that?  
[2] A: I'm going to guess sometime toward the end  
[3] of '97, I think.  
[4] Q: Now, at some point in time you did some  
[5] work on Mr. Cise's house; is that correct?  
[6] A: Yes.  
[7] Q: How did that come about?  
[8] A: He was building a home and he asked me to  
[9] do the rock on his house for him.  
[10] Q: Mr. Cise or Mr. Mower?  
[11] A: Mr. Mower.  
[12] Q: Did you enter into an agreement with Mr.  
[13] Mower?  
[14] A: Yes.  
[15] Q: Tell us what the terms of that agreement  
[16] were with respect to what you agreed to do and what  
[17] you were asked to do and what the price was or what  
[18] the terms of payment were.  
[19] A: Well, everything in the document's true.  
[20] About \$11 a foot, originally.  
[21] Q: Which document are you referring to?  
[22] A: I don't know. One of those, the \$11 a  
[23] foot.  
[24] Q: Are you talking about the proposal?  
[25] A: I'd have to look at it. Yes, looks the

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[1] same as in here.  
[2] Q: Is it the contract between —  
[3] A: Where's the paper that had \$11 a foot on  
[4] it? This here doesn't say anything about that.  
[5] Q: Let me show you the construction agreement  
[6] on Legend Builders' letterhead and see if that's what  
[7] you're referring to.  
[8] A: I must have been confused. I don't see  
[9] anything in here about that.  
[10] Q: Well, forget about the document that  
[11] you're referring to, since we can't find it, and tell  
[12] me what you're talking about as far as the original  
[13] terms and how they changed over time.  
[14] A: We agreed to do it for \$11 a foot and they  
[15] gave us a deposit up front. And because of the  
[16] popularity of the cultured stone, it was hard to get.  
[17] It would come in a box at a time, and we just couldn't  
[18] do the job. And I talked to him about it, and he  
[19] agreed we'd do real stone on it. And he gave me a  
[20] price for the total amount to do the whole job, and  
[21] there was enough money to do it, so I agreed to do it  
[22] for extra money because it was extra work. And  
[23] everything was fine until we got upset at each other,  
[24] and then everything changed.  
[25] Q: The price was originally \$11?

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[1] A: Right.  
[2] Q: And that was cultured stone?  
[3] A: It was.  
[4] Q: It was hard to get, and so you changed it  
[5] to real stone?  
[6] A: Yes.  
[7] Q: And did you talk to Mr. Mower about  
[8] raising the price at that time?  
[9] A: I did.  
[10] Q: And do you recall when that was?  
[11] A: It was before we started on the stone.  
[12] Q: And approximately when would that have  
[13] been?  
[14] A: I'm going to guess in September.  
[15] Q: Of '98?  
[16] A: '98.  
[17] Q: And the price you talked to him about was  
[18] what?  
[19] A: Well, he just told me a dollar amount,  
[20] \$7,300. There was a total amount to do the inside of  
[21] the fireplace with the hearth and plus the chimney.  
[22] Q: Where did the \$14 per square foot come in?  
[23] A: That's what's normally charged for the  
[24] work we did. That's what we charged everybody.  
[25] Q: Now, I show you what's been marked or

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[1] what's been introduced as Exhibit 4.  
[2] THE COURT: The invoice is 3.  
[3] MR. MITCHELL: Okay, Exhibit 3.  
[4] BY MR. MITCHELL:  
[5] Q: Is that something that you can identify  
[6] for us?  
[7] A: Yes.  
[8] Q: What is that?  
[9] A: It's an invoice sent to Mike Mower, Legend  
[10] Builders.  
[11] Q: Now, on that invoice it says \$6,300 as the  
[12] first figure under "amount." Is that the total  
[13] contract price?  
[14] A: That's the total per square foot. Yeah,  
[15] that's the total amount.  
[16] Q: And now if I understood your testimony,  
[17] \$14 per square foot is what you usually charge?  
[18] A: Yes. We usually charge more if we have to  
[19] go up high. We didn't charge him extra for the  
[20] height. There was extras we could have charged for  
[21] but we didn't.  
[22] Q: And the \$7,300 figure that you earlier  
[23] testified to was the limit of what Mr. Mower agreed  
[24] you could charge on that job?  
[25] A: Well, he just told me that he had that

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[1] much money and we could do it for that.  
[2] Q: So he actually came in under what he told  
[3] you he could do it for?  
[4] A: There was a hearth stone that was never  
[5] put on. I don't know whoever did it or what, but if  
[6] we would have, it would have been another \$200 for the  
[7] hearth stone.  
[8] Q: You heard Mr. Mower talk about the fact  
[9] that this item for steel of \$150 was not appropriate.  
[10] Do you have a response to that?  
[11] A: That what we always charge anybody. It  
[12] costs money. It costs money to do it. The materials,  
[13] you know, nobody gives it to me.  
[14] Q: So it doesn't make any sense to you that  
[15] you'd do it for free?  
[16] A: No.  
[17] Q: Now, you heard Mr. Mower talk about \$7 an  
[18] hour for stone that —  
[19] A: \$7 per square foot.  
[20] Q: Oh, excuse me, \$7 per square foot for  
[21] stone that he was going to lay?  
[22] A: That's correct.  
[23] Q: What was your agreement as far as Mr.  
[24] Mower working for you?  
[25] A: My agreement with him was that he could

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[1] work with me. He was already licensed as a general  
[2] contractor, and I didn't want any employees, and he  
[3] knew that, and because he was licensed that was fine.  
[4] And I agreed to pay him \$7 a foot and then if he did  
[5] anything by the hour, pay him by the hour for it.  
[6] Q: Did he do work for you?  
[7] A: Yeah, he did.  
[8] Q: Did you pay him?  
[9] A: I paid him \$1,500, and I have the  
[10] cancelled checks to prove that, a \$1,000 check and a  
[11] \$500 one.  
[12] Q: And did you owe him any other monies?  
[13] A: I owed him some money.  
[14] Q: How much more did you owe him?  
[15] A: I'm not sure right now because we did some  
[16] stuff together, and we would — I'd do the job and the  
[17] homeowner would agree to pay us \$30 an hour, and he'd  
[18] charge them \$50. I kept telling him you can't do that  
[19] because I'm not making that much. And as far as  
[20] gathering rock, it was by the ton, not by the hour.  
[21] And the day we gathered rock I sat and waited for him  
[22] for four hours to show up. And I'd call him and he  
[23] kept saying, "I'm on my way." I read a whole book  
[24] waiting for him.  
[25] Q: As you sit here today, can you tell us how



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[1] much you believe that you owe Mr. Mower for the  
[2] services he performed for you, for the work he did  
[3] with you?  
[4] **A:** Total was not \$3,800. Every time I've  
[5] talked to him it's gone up even farther.  
[6] **Q:** Where did it start out?  
[7] **A:** I'm just guessing, but it was somewhere  
[8] around \$3,000 total.  
[9] **Q:** And of that you paid him \$1,500?  
[10] **A:** I paid him \$1,500.  
[11] **Q:** And so it's your best guess today that the  
[12] amount that he originally asked from you was \$3,000?  
[13] **A:** Well, that's what we agreed on, yes,  
[14] originally.  
[15] **Q:** Is that the amount that you believe that  
[16] you owed him?  
[17] **A:** That's what I believe. I'd have to go  
[18] back and look. I can't remember.  
[19] **Q:** So if I take \$3,000 and subtract \$1,500  
[20] paid, the amount, but for your bankruptcy, you would  
[21] have owed him would be \$1,500?  
[22] **A:** Somewhere around there.  
[23] **MR. MITCHELL:** Okay. Nothing further,  
[24] your Honor.  
[25] **THE COURT:** Mr. Goodman?

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[1] **CROSS-EXAMINATION**  
[2] **BY MR. GOODMAN:**  
[3] **Q:** So your original agreement on the Cise  
[4] property was \$11 a square foot for cultured stone,  
[5] correct?  
[6] **A:** For cultured stone.  
[7] **Q:** And you got a \$2,500 deposit?  
[8] **A:** Yes.  
[9] **Q:** What did you do with that deposit?  
[10] **A:** I put it in a checking account.  
[11] **Q:** So you didn't deposit it with any supplier  
[12] to receive materials?  
[13] **A:** No. It was written out to me. I had to  
[14] deposit it.  
[15] **Q:** And then you stated at some time  
[16] thereafter you agreed to or you talked to Mr. Mower  
[17] about using natural stone, correct?  
[18] **A:** I did.  
[19] **Q:** Was anybody present during this  
[20] conversation?  
[21] **A:** Just between him and I.  
[22] **Q:** Did you have a written authorization to  
[23] charge \$14 a square foot?  
[24] **A:** He never even had a written contract. It  
[25] was all verbal.

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[1] **Q:** Did Mr. Cise ever give you authority or  
[2] approval to charge \$14 per square foot?  
[3] **A:** Not that I know of.  
[4] **Q:** And so Mr. Mower worked for you for some  
[5] time as an independent contractor; is that your  
[6] testimony?  
[7] **A:** That's right.  
[8] **Q:** And you testified that you do owe him  
[9] money as a result of that, from his employment,  
[10] correct?  
[11] **A:** Yes.  
[12] **Q:** You had a falling out with Mr. Mower? I  
[13] think you said you got in a dispute, had an argument  
[14] with him during this time?  
[15] **A:** That's right.  
[16] **Q:** You didn't charge him \$14 a square foot on  
[17] that December 1st invoice because you were mad at Mr.  
[18] Mower, did you?  
[19] **A:** No. If you saw the job, what we had to do  
[20] for the job, you'd have charged more, especially when  
[21] we got on the roof. We're lucky that somebody didn't  
[22] get killed up there.  
[23] **MR. GOODMAN:** Nothing further.  
[24] **THE COURT:** Mr. Patterson?  
[25] **MR. PATTERSON:** I have no questions of

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[1] this witness, your Honor.  
[2] **THE COURT:** Mr. Mitchell?  
[3] **MR. MITCHELL:** Nothing further, your  
[4] Honor.  
[5] **THE COURT:** Any questions of this witness  
[6] by the Board? Mr. Techmeyer?  
[7] **MR. TECHMEYER:** Yes, I do. Mr. Mower,  
[8] testified that the job wasn't done until December of  
[9] '98. This invoice is dated December 1st of '98, and  
[10] yet reflects that the balance of \$3,950 is 61 to 90  
[11] days past due. My assumption — maybe that's a bad  
[12] word to use — is that this isn't the first invoice  
[13] that went out to him. If you're reflecting on it 61  
[14] to 90 days past due, I'm just curious of the timing  
[15] conflict that's going on here. How, if the job wasn't  
[16] done until December of '98 and the invoice is dated  
[17] December of '98, how could it be over 60 days past  
[18] due? And is this the first and only printed invoice  
[19] that was sent out?  
[20] **THE WITNESS:** I don't think that — I  
[21] don't know if that's the first one, but that 60 to 90  
[22] days, we've had a problem with our computer since day  
[23] one doing that. I can bill somebody the first billing  
[24] and it will come out 60 to 90 days. There's just  
[25] something wrong with the computer. We've never been

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[1] able to figure it out. New program or something.  
[2] **MR. TECHMEYER:** So it's not actually 61 to  
[3] 90 days past due?  
[4] **THE WITNESS:** No. We actually finished  
[5] laying rock on — the last day I laid rock on the  
[6] house was Thanksgiving Day. I went back the next day  
[7] and cut the wires on it and washed it the next day.  
[8] And he sent me a letter thanking me for the quality of  
[9] work that we had done and demanded we come out and  
[10] clean up our mess. Well, later on he told me that  
[11] they agreed it wasn't our mess. It was supposedly  
[12] left by the stucco man. We picked up other people's  
[13] garbage that wasn't even ours, wrappers off the stone,  
[14] shingles and stuff, and threw it away. I don't know  
[15] what happened to that letter. Do you? Do you have  
[16] the letter there? So we actually finished the job,  
[17] really, as far as laying the stone, on Thanksgiving  
[18] Day.  
[19] **MR. TECHMEYER:** I have no further  
[20] questions, your Honor.  
[21] **THE COURT:** Mr. Weller?  
[22] **MR. WELLER:** No.  
[23] **THE COURT:** Mr. Arbuckle?  
[24] **MR. ARBUCKLE:** Yes. Is it your  
[25] understanding that Mr. Mower was paid in full \$7,300

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[1] or whatever the rest of the stone was?  
[2] **THE WITNESS:** As far as I understood,  
[3] yeah. It was before the end of the year.  
[4] **MR. ARBUCKLE:** So he was paid in full?  
[5] **THE WITNESS:** As far as I understand,  
[6] yes.  
[7] **THE COURT:** Mr. Jensen?  
[8] **MR. JENSEN:** No further questions.  
[9] **THE COURT:** Mr. Burton?  
[10] **MR. BURTON:** None.  
[11] **THE COURT:** Mr. Bankhead?  
[12] **MR. BANKHEAD:** Do you remember whose idea  
[13] it was to change from cultured stone?  
[14] **THE WITNESS:** It was my idea, because we  
[15] were having a hard time getting it in, and we still  
[16] have a hard time getting it in. It's so popular that  
[17] we just finished a job that we'd been working on for  
[18] almost ten months because we didn't get the stone.  
[19] **MR. BANKHEAD:** If you had taken the \$2,500  
[20] and given it to your supplier, do you think that would  
[21] have made any difference?  
[22] **THE WITNESS:** Difference as to what?  
[23] **MR. BANKHEAD:** As to how available the  
[24] stone might have been at that point.  
[25] **THE WITNESS:** Had no bearing on it

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[1] whatsoever. Everybody's been having trouble getting  
[2] it for years. It was even worse now, because of all  
[3] the building across the country has just gotten, you  
[4] know, people can't get bricks so they get artificial  
[5] or real stone. They just can't do it fast enough.  
[6] Can't get the material.  
[7] **MR. BANKHEAD:** No further questions.  
[8] **THE COURT:** Any other questions from the  
[9] Board of this witness?  
[10] Mr. Mitchell?  
[11] **MR. MITCHELL:** Just one follow-up, your  
[12] Honor.  
[13] **REDIRECT EXAMINATION**  
[14] **BY MR. MITCHELL:**  
[15] **Q:** Mr. Goodrich, you referred to a letter  
[16] that Mr. Mower sent you. I'd like to show you that  
[17] letter and ask you if that's the letter you're  
[18] referring to.  
[19] **A:** That's the letter.  
[20] **MR. MITCHELL:** Your Honor, I'd like to  
[21] have this marked and entered as an exhibit.  
[22] **THE COURT:** Show it to counsel before I  
[23] consider that.  
[24] Any objection, Mr. Goodman?  
[25] **MR. GOODMAN:** No objection, your Honor.

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[1] **THE COURT:** Mr. Patterson?  
[2] **MR. PATTERSON:** None, your Honor.  
[3] **THE COURT:** It will be identified as  
[4] Exhibit Number 4 and it is received. I'll get copies  
[5] to the Board at an appropriate time. Go ahead.  
[6] **BY MR. MITCHELL:**  
[7] **Q:** That letter is dated December 2nd; is that  
[8] right?  
[9] **A:** Yes.  
[10] **Q:** And is it your recollection that you  
[11] received it sometime after that day?  
[12] **A:** Yes.  
[13] **Q:** I notice in the letter there's nothing  
[14] there that indicates that you owe Mr. Goodrich any  
[15] money.  
[16] **A:** Mr. —  
[17] **Q:** I mean Mr. Mower, excuse me.  
[18] **A:** No.  
[19] **Q:** I notice in the letter that he threatened  
[20] to withhold or deduct from your contract the amount of  
[21] your contract, \$50 — is it per hour?  
[22] **A:** Yes.  
[23] **Q:** For cleanup work?  
[24] **A:** Yes.  
[25] **Q:** There's no suggestion there that he

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[1] doesn't owe you any money; is that correct?  
[2] **A:** No suggestion.  
[3] **MR. MITCHELL:** Okay, nothing further, your  
[4] Honor.  
[5] **THE COURT:** Mr. Goodman?  
[6] **MR. GOODMAN:** Nothing further, your  
[7] Honor.  
[8] **THE COURT:** Mr. Patterson?  
[9] **MR. PATTERSON:** No questions.  
[10] **THE COURT:** If I could see the letter,  
[11] please.  
[12] Any other questions of this witness by the  
[13] Board? You're excused, Mr. Goodrich. Thank you.  
[14] Mr. Mitchell, any further testimony on  
[15] behalf of the Claimant?  
[16] **MR. MITCHELL:** No, your Honor.  
[17] **THE COURT:** Mr. Goodman, any further  
[18] testimony on behalf of Legend?  
[19] **MR. GOODMAN:** I'd like to recall Mr.  
[20] Mower, please.  
[21] **THE COURT:** Okay. Take the stand, please,  
[22] and recall you're still under oath.  
[23] Mr. Goodman?  
[24] **MR. GOODMAN:** Couple things.  
[25]

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[1] **FURTHER REDIRECT EXAMINATION**  
[2] **BY MR. GOODMAN:**  
[3] **Q:** Counsel just offered a letter, Exhibit 5  
[4] dated December 2nd, 1998. Did you send that letter  
[5] out to Mr. Goodrich?  
[6] **A:** I did.  
[7] **Q:** When you sent that letter out, had you  
[8] received this invoice dated December 1st, 1998?  
[9] **A:** I'm sure that I had not.  
[10] **Q:** So when you sent the letter December 2nd,  
[11] did you know how much or if you owed Mr. Goodrich any  
[12] money at all at that point?  
[13] **A:** No.  
[14] **Q:** Did you ever have a conversation with a  
[15] supplier of cultured stone during the construction of  
[16] this house?  
[17] **A:** State Stone.  
[18] **Q:** You talked to State Stone?  
[19] **A:** Yes.  
[20] **Q:** Do you recall who you spoke to?  
[21] **A:** I don't recall her name. It was an  
[22] elderly lady is the best I can do.  
[23] **MR. MITCHELL:** Your Honor, I'm going to  
[24] object on the grounds of hearsay as to what was said  
[25] by somebody at State Stone.

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[1] **THE COURT:** Well, it is hearsay, but it is  
[2] admissible unless — it is admissible but cannot be  
[3] relied upon by the Board to resolve the dispute of a  
[4] factual matter without some other corroborative  
[5] witness or otherwise admissible evidence beyond  
[6] hearsay. So go ahead.  
[7] **BY MR. GOODMAN:**  
[8] **Q:** Did this individual state anything to you  
[9] regarding Mr. Goodrich and his getting supplies from  
[10] State Stone?  
[11] **A:** Yeah. I went in and asked to find out why  
[12] the stone hadn't — because Nathan kept telling me  
[13] that it wasn't coming in, wasn't coming in, and that  
[14] partial orders were coming in and he wanted to pick up  
[15] a full order. So I went in to find out why,  
[16] personally, to find out why we were having such a hard  
[17] time getting the materials, since we had paid the  
[18] deposit so much earlier. And in talking to the lady  
[19] there, who I got impression she was either the wife of  
[20] the owner or the owner. She was very knowledgeable of  
[21] the company. She said that Nathan hadn't deposited  
[22] any money with them and that he didn't need to because  
[23] he had an account there. And she said that his order  
[24] had come in partial orders over the period of time,  
[25] and that he hadn't come to pick them up, so she just

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[1] resold them.  
[2] **Q:** So she told you that the cultured stone  
[3] had been received, but Mr. Goodrich refused to pick it  
[4] up?  
[5] **A:** Right.  
[6] **Q:** Was the delay in getting the cultured  
[7] stone one reason you agreed to use natural stone?  
[8] **A:** The delay in getting the natural stone is  
[9] why I think Nathan decided —  
[10] **Q:** The delay in getting the cultured stone,  
[11] you mean?  
[12] **A:** His reported delay. Because in fact there  
[13] apparently wasn't a delay. It was because Nathan  
[14] didn't want to go pick up, you know, partial orders.  
[15] He wanted to do the whole thing at once. And Nathan  
[16] is a masonry contractor, and he knows how hard it is  
[17] to get in, and he'd be familiar that you have to come  
[18] in to pick up partial orders.  
[19] **Q:** You've already testified that based on  
[20] your experience, natural stone is more expensive than  
[21] cultured stone?  
[22] **A:** Correct.  
[23] **Q:** When you agreed to use natural stone, did  
[24] you ask Mr. Goodrich why he would be willing to do  
[25] that based on the same contract price?

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[1] A: I didn't need to ask him. Nathan offered  
[2] it. Nathan said that since we're having such a hard  
[3] time, let's go with this. He asked me how much I've  
[4] got into it, and at that time we were on good working  
[5] terms and we were talking about sharing profits and  
[6] stuff like that. So I told him how much I have into  
[7] it. It was never discussed that the customer was  
[8] going to be billed more, or if, as a subcontractor, he  
[9] would bill me more.  
[10] Q: Did you ever seek approval from Mr. Cise  
[11] to charge \$14 per square foot for natural stone?  
[12] A: No.  
[13] MR. GOODMAN: Nothing further, your  
[14] Honor.  
[15] THE COURT: Mr. Mitchell?  
[16] MR. MITCHELL: Nothing further, your  
[17] Honor.  
[18] THE COURT: Mr. Patterson?  
[19] MR. PATTERSON: No questions, your Honor.  
[20] THE COURT: Any further questions of the  
[21] Board of this witness? Yes, Mr. Ar buckle?  
[22] MR. ARBUCKLE: Mr. Mower, the budget that  
[23] you had, was the amount of \$7,300 an accurate number?  
[24] THE WITNESS: Seems like it was \$6,300 to  
[25] me, but I'd have to see my notes. I don't have them

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[1] here.  
[2] MR. ARBUCKLE: And were you paid in full  
[3] for that?  
[4] THE WITNESS: Yes, I was.  
[5] MR. ARBUCKLE: And so my question is: Why  
[6] wasn't he paid for the \$11 a square foot anyway?  
[7] THE WITNESS: I believe that he has been  
[8] compensated.  
[9] MR. ARBUCKLE: So that's your testimony,  
[10] that the compensation was paid for Mr. Cise, or  
[11] whoever, Cise, is in the middle of this mess?  
[12] THE WITNESS: Well, I didn't, you know, it  
[13] wasn't my intent to have Mr. Cise in the middle of  
[14] this mess. I was frustrated that — I mean, I've had  
[15] disagreements with subcontractors before on amounts  
[16] like this where you go in to small claims and you  
[17] settle them in one night. So I'm frustrated that Mr.  
[18] Cise has been drug into it, and I'm frustrated that  
[19] I've been drug into it and had to hire an attorney  
[20] over such a small amount. And, you know, I just —  
[21] I've never been able to contact Nathan Goodrich to go  
[22] over anything, and so this is what we're left with.  
[23] THE COURT: Any other questions by the  
[24] Board?  
[25] MR. BURTON: I've got one.

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[1] THE COURT: Yes, Mr. Burton?  
[2] MR. BURTON: I just want to make sure I'm  
[3] clear on this because to me this is an important  
[4] point. You've testified that you never had a  
[5] conversation with Mr. Goodrich about raising the price  
[6] on the stone. Is that accurate?  
[7] THE WITNESS: That's correct.  
[8] MR. BURTON: And you heard him testify  
[9] that he did have such a conversation with you. Was he  
[10] mistaken on it?  
[11] THE WITNESS: Well, he's mistaken on the  
[12] interpretation. His interpretation is that I was  
[13] saying that he had \$6,300 or whatever with which to do  
[14] the job with, and I never said that. I said what was  
[15] in my budget to do it. And we were talking at that  
[16] time in terms of sharing profits, which I never shared  
[17] any profits for jobs that I worked on with him, so I  
[18] don't see why he would be entitled to profits that,  
[19] you know, that he shared with me. And that's where  
[20] that came from. I don't know if he interpreted that  
[21] as I was saying to him do whatever you want, but just  
[22] don't go over this amount. That was never, ever  
[23] said.  
[24] MR. BURTON: Let me see. Was there a  
[25] specific discussion when the stone was changed about

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[1] whether it would cost more money? Was that issue  
[2] simply silent with no discussion about it one way or  
[3] another? And the third alternative, was there a  
[4] specific discussion that said it will not cost any  
[5] more?  
[6] THE WITNESS: There was no discussion that  
[7] it would cost more.  
[8] MR. BURTON: Was the issue talked about,  
[9] or was there simply no discussion about it, period,  
[10] one way or another?  
[11] THE WITNESS: As I stated, at the time we  
[12] were working as partners with respect to the stone,  
[13] and at that time we were talking about sharing the  
[14] profits; that we'd do the jobs, subtract the \$7 a  
[15] square foot, subtract the materials, and then whoever  
[16] the lead came from got 10 percent of the job and then  
[17] anything over that we'd share the profits. And no  
[18] profits were ever shared. And so, like I said, I  
[19] don't feel compelled that I should have to share my  
[20] profits with him. So there was no discussion of ever  
[21] raising the prices at the job.  
[22] MR. BURTON: There was no witness to any  
[23] of these conversations, just you and Mr. Goodrich?  
[24] THE WITNESS: Yes. I think it's also  
[25] important to note that I think that part of Nathan's

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[1] urgency to do the — to get the job going with natural  
[2] stone is he was under the impression that if he  
[3] hurried and did some work, that he could get a draw on  
[4] the job. Nathan was constantly — he was constantly  
[5] out of money. I ended up loaning him \$300 because  
[6] they were having such a — supposedly were not  
[7] collecting. He was not collecting any money off the  
[8] jobs that we had done together. And he would indicate  
[9] to me his financial problems, so I loaned him \$300.

[10] He was always under extreme pressure financially.

[11] And a couple of days or a week — I  
[12] forget exactly the time frame — after he started to  
[13] work with the stone, he invoiced me for some more  
[14] money. And I told him at that point we couldn't  
[15] invoice for more money until the job was done, because  
[16] we've already collected — already been paid \$2,500.  
[17] And he said to me at that point that he thought that  
[18] if he started the job, he could get a draw. Well, he  
[19] didn't have cultured stone to start, and so I suppose  
[20] that he thought that was, as far as a cash flow, an  
[21] advantage to start with the natural stone as well.

[22] **THE COURT:** Any other questions by the  
[23] Board?

[24] **MR. BANKHEAD:** I have one final question.

[25] **THE COURT:** Go ahead.

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[1] **MR. BANKHEAD:** Do I understand correctly  
[2] that you did have a specific conversation with the  
[3] homeowners saying or getting approval for the change  
[4] from cultured stone to natural stone? Did you inform  
[5] them at that time there would be no additional charge  
[6] for the change?

[7] **THE WITNESS:** I did.

[8] **THE COURT:** Mr. Goodman, anything  
[9] further?

[10] **MR. GOODMAN:** Nothing further, your  
[11] Honor.

[12] **THE COURT:** Mr. Mitchell?

[13] **MR. MITCHELL:** Brief follow-up, your  
[14] Honor.

[15] **FURTHER RECROSS-EXAMINATION**  
[16] **BY MR. MITCHELL:**

[17] **Q:** Board member Burton asked you whether  
[18] there was any talk about raising the price when you  
[19] went from cultured to natural, and you said there was  
[20] no discussion about that. And he asked you to be  
[21] specific about a couple of things, and one of them was  
[22] if there was any discussion about not raising the  
[23] price. Was there a discussion about not raising the  
[24] price?

[25] **A:** No.

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[1] **Q:** And maybe I'm confused, but I believe you  
[2] testified earlier that Mr. Goodrich specifically  
[3] agreed that there wouldn't be any additional price,  
[4] that he specifically said that we're going to change  
[5] from cultured to real, but I'm going to do it for the  
[6] same price.

[7] **A:** No, the discussion was, he was — he came  
[8] to me and said let's get this job underway, and let's  
[9] go ahead and do it with natural stone. And I'd be —  
[10] I think it's probably factual to say that I told him  
[11] that I couldn't charge the customer more. I know I  
[12] told him I'd have to get approval from the customer,  
[13] and I told the customer that it would cost more.

[14] **Q:** So you specifically told Mr. Cise that it  
[15] would cost more?

[16] **A:** Yes.

[17] **Q:** And so if he gets up and tell us that that  
[18] never occurred, he's mistaken, too; is that correct?

[19] **A:** That would be correct.

[20] **MR. MITCHELL:** Nothing further. Thank  
[21] you.

[22] **THE COURT:** Mr. Goodman?

[23] **MR. GOODMAN:** Nothing further, your Honor.

[24] **THE COURT:** Mr. Patterson?

[25] **MR. PATTERSON:** (Shook his head.)

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[1] **THE COURT:** Mr. Mower, you're excused.  
[2] Thank you.

[3] Mr. Mitchell, any further testimony?

[4] **MR. MITCHELL:** Yes. I've got to call Mr.  
[5] Goodrich back.

[6] **THE COURT:** Okay, Mr. Goodrich, please  
[7] recall you're still under oath.

[8] Mr. Mitchell?

[9] **FURTHER REDIRECT EXAMINATION**  
[10] **BY MR. MITCHELL:**

[11] **Q:** Mr. Goodrich, you heard Mr. Mower's  
[12] testimony about the scenario at State Stone where  
[13] stone came in but you just didn't want to go pick up  
[14] partial loads. Is there any truth to that?

[15] **A:** Yeah, there's truth to that.

[16] **Q:** Tell us about it.

[17] **A:** Well, originally when we talked about  
[18] doing this house, he gave me a time frame which it  
[19] didn't fall within. When we finally did go do the  
[20] job, we started when it was ready. And if we'd have  
[21] gone and picked up stone I'd have picked up one box  
[22] and had to drive it out there with one box, and it  
[23] just wasn't worth it.

[24] **Q:** And why wasn't it worth it?

[25] **A:** Because you've got to hand unload all the

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[1] stuff, and there was no place to put it, and the place  
[2] was muddy. There was no place to put the rock. It  
[3] would have gotten scratched up and damaged.  
[4] Q: What was the delay in starting the job?  
[5] A: It wasn't ready.  
[6] Q: Why not?  
[7] A: Just — it wasn't done. The stucco wasn't  
[8] on. The windows weren't on. The deck wasn't in.  
[9] Q: Who was responsible for getting them in?  
[10] A: Legend Builders.  
[11] Q: Mr. Mower?  
[12] A: Mr. Mower.  
[13] Q: Now, Mr. Mower, you also heard him suggest  
[14] that you were mistaken in your interpretation of his  
[15] parameters as far as costs for doing your part of the  
[16] job. Were you mistaken as to what he said as far as  
[17] that he had \$7,300 to do your part of the job?  
[18] A: What he told me was there was \$6,000 to do  
[19] rook and there was \$1,300 to do the hearth. I don't  
[20] know what that meant exactly, so that's \$7,300  
[21] total.  
[22] MR. MITCHELL: Nothing further, your  
[23] Honor.  
[24] THE COURT: Mr. Goodman?  
[25]

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[1] FURTHER RECROSS-EXAMINATION  
[2] BY MR. GOODMAN:  
[3] Q: Do you ever store materials on a job?  
[4] A: No, because people steal it.  
[5] Q: So you never keep materials on the job?  
[6] A: No. People steal it.  
[7] Q: Even if you have the job secure and it's  
[8] locked?  
[9] A: Pertaining to this job? It wasn't  
[10] locked.  
[11] MR. GOODMAN: Nothing further.  
[12] THE COURT: Mr. Patterson?  
[13] MR. PATTERSON: No questions, your Honor.  
[14] THE COURT: Any further questions for to  
[15] witness by the Board?  
[16] Mr. Goodrich, you're excused. Thank you.  
[17] Mr. Mitchell, any further testimony?  
[18] MR. MITCHELL: No, your Honor.  
[19] THE COURT: Mr. Goodman?  
[20] MR. GOODMAN: We call Mr. Cise, your  
[21] Honor.  
[22] THE COURT: Mr. Cise?  
[23] (The witness was sworn.)  
[24] THE COURT: Please be seated.  
[25] Mr. Goodman?

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[1] DIRECT EXAMINATION  
[2] BY MR. GOODMAN:  
[3] Q: Can you state your name for the record,  
[4] Mr. Cise.  
[5] A: David Michael Cise.  
[6] Q: And what is your current address?  
[7] A: 16162 South Step Mountain Road.  
[8] Q: And you contracted with Legend Builders to  
[9] build your home, correct?  
[10] A: Correct.  
[11] Q: Did you contract with Legend Builders to  
[12] build your home?  
[13] A: I contracted with Legend Builders under  
[14] the understanding that Michael Mower was the President  
[15] and was the sole person.  
[16] Q: You've been present during this entire  
[17] hearing this morning, haven't you?  
[18] A: Yes.  
[19] Q: And you've heard all the testimony and  
[20] everything that's gone on. I guess one question that  
[21] you can answer better than anybody here and resolve is  
[22] did you have a conversation with Mr. Mower regarding  
[23] the change from cultured stone to natural stone?  
[24] A: I did.  
[25] Q: Did Mr. Mower tell you that the natural

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[1] stone would cost more money?  
[2] A: No. He told me that the — there would be  
[3] no additional cost for the natural stone. Since I  
[4] valued natural stone greater than cultured, that was  
[5] kind of a break.  
[6] Q: And you thought you were getting a good  
[7] deal?  
[8] A: Yeah.  
[9] MR. GOODMAN: Nothing further, your  
[10] Honor.  
[11] THE COURT: Mr. Mitchell?  
[12] MR. MITCHELL: Nothing, your Honor.  
[13] THE COURT: Mr. Patterson?  
[14] MR. PATTERSON: No questions.  
[15] THE COURT: Any questions of this witness  
[16] by the Board?  
[17] MR. ARBUCKLE: I have a question.  
[18] THE COURT: Yes, Mr. Arbuckle?  
[19] MR. ARBUCKLE: Mr. Cise, you understand  
[20] you paid Mr. Mower and Legend Builders in full?  
[21] THE WITNESS: Yes, I did.  
[22] MR. ARBUCKLE: And did you get a lien  
[23] release from the subcontractors?  
[24] THE WITNESS: A lien release from Mr.  
[25] Mower?



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[1] **MR. ARBUCKLE:** Well, from Mr. Mower or  
[2] anybody else who supplied labor and materials on the  
[3] job.  
[4] **THE WITNESS:** Yes, I did.  
[5] **MR. ARBUCKLE:** Have you gotten a lien  
[6] release from Mr. Mower?  
[7] **THE WITNESS:** Yes.  
[8] **MR. ARBUCKLE:** But not, obviously,  
[9] Bedrock?  
[10] **THE WITNESS:** That was dismissed, I  
[11] believe.  
[12] **MR. ARBUCKLE:** Okay. So the work was done  
[13] to your satisfaction?  
[14] **THE WITNESS:** Yes.  
[15] **MR. ARBUCKLE:** Let me think a minute here.  
[16] **THE COURT:** I'll come back to you. Any  
[17] further questions?  
[18] **MR. JENSEN:** I have one.  
[19] **THE COURT:** Mr. Jensen?  
[20] **MR. JENSEN:** Did you ever see a copy of  
[21] Mr. Mower's contractor's license?  
[22] **THE WITNESS:** Yes, I did.  
[23] **MR. JENSEN:** And it said just Mike Mower?  
[24] **THE WITNESS:** Mike Mower.  
[25] **MR. JENSEN:** Did that raise a question in

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[1] your mind that maybe —  
[2] **THE WITNESS:** I guess in the beginning of  
[3] the agreements when I was signing, being excited,  
[4] being an excited homebuilder, I didn't peruse the  
[5] contract in that area as opposed to the other areas,  
[6] where it specified materials.  
[7] **MR. JENSEN:** I might ask, what do you do  
[8] for your occupation or profession?  
[9] **THE WITNESS:** I'm an engineer developing  
[10] medical products.  
[11] **MR. BURTON:** Nothing else.  
[12] **THE COURT:** Mr. Bankhead?  
[13] **MR. BANKHEAD:** When you signed the  
[14] contract with Mr. Mower, was it with your  
[15] understanding that you were signing a contract with a  
[16] licensed contractor?  
[17] **THE WITNESS:** Yes.  
[18] **MR. BANKHEAD:** That's all.  
[19] **THE COURT:** Mr. Arbuckle?  
[20] **MR. ARBUCKLE:** Nothing further, thanks.  
[21] **THE COURT:** Anything else for this  
[22] witnesses, Mr. Mitchell?  
[23] **CROSS-EXAMINATION**  
[24] **BY MR. MITCHELL:**  
[25] **Q:** You recall when we served you with a

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[1] complaint seeking to foreclose Mr. Goodrich's lien?  
[2] **A:** Yes, I do.  
[3] **Q:** And you contacted an attorney, Brad  
[4] Helsten, after that?  
[5] **A:** Yes.  
[6] **Q:** And Mr. Helsten sent a letter to me  
[7] demanding that we dismiss that lawsuit against you  
[8] because you qualified under the Lien Recovery Act, and  
[9] as part of that letter he sent me documentation,  
[10] including Mr. Mower's construction license?  
[11] **A:** Correct.  
[12] **Q:** And you recall as a result of that letter  
[13] we did, in fact, dismiss you from the lawsuit?  
[14] **A:** Yes.  
[15] **Q:** And you realize that we did dismiss you  
[16] from the lawsuit based upon our belief that you were  
[17] correct that you would covered by the Lien Recovery  
[18] Act?  
[19] **A:** The Lien Recovery Act?  
[20] **Q:** Well, the lien recovery fund.  
[21] **A:** This? What we're hearing about right  
[22] now?  
[23] **Q:** That's correct.  
[24] **A:** I was being released from the lawsuit,  
[25] from the lien.

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[1] **Q:** Well, let me just rephrase the question.  
[2] Maybe it wasn't clear. We dismissed you from the  
[3] lawsuit because of your representation and our belief  
[4] in your representation that you'd met all the  
[5] requirements to be protected by the Lien Recovery  
[6] Statute.  
[7] **A:** (No audible or visible response.)  
[8] **Q:** Let me try again.  
[9] **THE COURT:** Let me help if I can.  
[10] Do you know why you were released from the  
[11] lawsuit?  
[12] **THE WITNESS:** Because Michael Mower was a  
[13] licensed contractor. At that time I believed I was  
[14] under contract with him, and I still do believe I was  
[15] under contract with Michael Mower.  
[16] **MR. MITCHELL:** Okay. Nothing further,  
[17] your Honor. Thank you.  
[18] **THE COURT:** Mr. Goodman?  
[19] **MR. GOODMAN:** Nothing further, your  
[20] Honor.  
[21] **THE COURT:** Mr. Patterson?  
[22] **MR. PATTERSON:** (Shook his head).  
[23] **THE COURT:** Mr. Cise, you're excused.  
[24] Thank you.  
[25] Mr. Goodman, any further testimony?

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[1] **MR. GOODMAN:** None, your Honor.  
[2] **THE COURT:** Closing argument, Mr.  
[3] Mitchell?  
[4] **MR. MITCHELL:** Just briefly, your Honor.  
[5] Mr. Cise thought he was covered by the  
[6] Lien Recovery Fund. He thought he was doing business  
[7] with — that he had contracted with a licensed  
[8] contractor. There's no question that he didn't  
[9] contract with a licensed contractor. We believe that  
[10] the statute should be construed to protect him under  
[11] these circumstances, where you have Mr. Mower, who's  
[12] doing business as a corporation, he's a sole  
[13] shareholder and he's not — by his own testimony this  
[14] corporation is a corporation in name only. It's not  
[15] something where he had annual meetings. He never had  
[16] — in the actually incorporation, that he never had  
[17] officers other than himself, he never had directors,  
[18] he never had shareholders meetings, he never had  
[19] books. He never did anything other than incorporate,  
[20] or actually change the name of the corporation. We  
[21] don't think, under those circumstances where the  
[22] corporation really is Michael Mower, that the Lien  
[23] Recovery Act requirement that Mr. Cise enter into a  
[24] contract with a licensed contractor should take away  
[25] Mr. Cise's protection, because what Mr. Goodrich will

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[1] be forced to do if the Lien Recovery Act doesn't come  
[2] into play is set aside that release of his claim that  
[3] was made based upon everybody's understanding that he  
[4] was protected by the Lien Recovery Act. So it's  
[5] really you have an innocent homeowner who believed in  
[6] good faith that he was meeting all the requirements,  
[7] and we don't think that he should be punished for  
[8] that.  
[9] **THE COURT:** Mr. Goodman?  
[10] **MR. GOODMAN:** Just a few things as well.  
[11] Mr. Mower's kind of in an ironic position,  
[12] because he agrees with Mr. Mitchell on the licensing  
[13] issue. He thought he was in compliance with the  
[14] statute, and he acted in ignorance of it. That may be  
[15] insufficient, but he feels that he was a licensed  
[16] contractor and he believed that he contracted with  
[17] Mr. Cise as such, and that test should be met.  
[18] Mr. Mower's dispute with Nathan Goodrich  
[19] and Bedrock Masonry is really a valuation issue,  
[20] whether or not he's entitled to recover \$14 a square  
[21] foot, and whether or not money should be offset  
[22] against that. Mr. Goodrich acknowledges and admits  
[23] that he owed my client contemporaneous with  
[24] performance on this contract. Mr. Mower's emphasis  
[25] really is on the valuation prong and not the licensing

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[1] prong.  
[2] **THE COURT:** Mr. Patterson?  
[3] **MR. PATTERSON:** The statutory provision  
[4] that we've been referring to, and I'll just read it to  
[5] refresh our memories, states: "To recover from the  
[6] fund, regardless of whether the residence is occupied  
[7] by the owner or a subsequent owner or the owners or  
[8] subsequent owners, tenant or lessee, a qualified  
[9] beneficiary shall establish that the owner of the  
[10] owner-occupied residence or the owner-agent entered  
[11] into a written contract with an original contractor,  
[12] licensed or exempt from licensure under Title 58,  
[13] Chapter 55 — Title 58, Chapter 55, Utah Construction  
[14] Trades and Licensing Act, for the performance of  
[15] qualified services."  
[16] It is the Division's position that this  
[17] statute has not been met for several reasons, and I  
[18] would like to go through them one at a time. The  
[19] ultimate request of the Division is that this claim be  
[20] denied. It's one of those unfortunate circumstances  
[21] where it is impossible for the creators of a statute  
[22] to be able to encompass every single case that may  
[23] exist out there within the umbrella of a particular  
[24] given act or legislation.  
[25] The claim that has been raised by the

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[1] Claimant that somehow the corporation was an alter ego  
[2] of Mr. Mower is actually an equitable doctrine. It  
[3] has been recognized as an equitable doctrine in the  
[4] State of Utah most recently in Warner Jacobsen versus  
[5] — that's a good question, what that last word is.  
[6] It's like Bernard or something like that, and 946 P2d,  
[7] 744. On page 747 it states that it is an equitable  
[8] doctrine. That case is preceded by three other  
[9] cases — well, excuse me — several other cases that  
[10] also hold the same thing, that when you are asking a  
[11] tribunal to exercise or use this doctrine, this  
[12] equitable doctrine, is it equity.  
[13] Now, it would be nice if in fact the Board  
[14] and the Division had equitable powers. This might be  
[15] a case where that could be exercised in. However, the  
[16] Division and the Department is a statutory creature.  
[17] It was created by the Legislature, and as such it only  
[18] has — these two agencies only have — the authority  
[19] granted to it by the Legislature. They have limited  
[20] jurisdiction. And in going through their enabling  
[21] legislation for both of those agencies, it is void of  
[22] any language that would infer or imply that the agency  
[23] has the ability to exercise equitable authority in any  
[24] of the matters that it does handle.  
[25] Now, there are some cases out there that I



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[1] would like to briefly tell you about. The first one  
[2] is Avis versus the Industrial Commission. In that  
[3] particular case the court of Appeals ruled — and  
[4] that's a '92 case — that the Industrial Commission  
[5] is not a Court of general jurisdiction. And in an  
[6] earlier case, in Bevan versus Industrial Commission,  
[7] it stated that the Industrial Commission had only  
[8] those powers expressly or impliedly granted to it by  
[9] the Legislature.

[10] Now, the Industrial Commission is like the  
[11] Department of Commerce and the Division. It is a  
[12] statutorily-created entity. It has only those  
[13] authorities granted to it or that can be implied from  
[14] the grant of authority in the enabling legislation.  
[15] We believe that these two cases are controlling, and  
[16] that based upon the lack of language that grants any  
[17] type of equitable powers to the Division or the  
[18] Department of Commerce, that this tribunal cannot  
[19] exercise equitable principles or concepts within its  
[20] decisions. Its decisions must be based upon the law  
[21] and cannot be based upon equity.

[22] Now, the intent of the Legislature has  
[23] also been brought up. We're all familiar with the  
[24] two-prong intent that has been stated for this  
[25] legislation, to protect homeowners and to pay claims

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[1] of claimants. However, that intent is conditioned  
[2] upon the individual meeting the criteria within the  
[3] legislation to begin with. That criteria has not been  
[4] met because the only argument that has been raised and  
[5] that could be raised for this is that by using the  
[6] doctrine of alter ego, the contract was, in fact,  
[7] entered into with a licensed contractor. As you read  
[8] through contract you'll notice that quite clearly it  
[9] is not with Michael Mower. It is clearly with the  
[10] corporation. We cannot exercise that equitable  
[11] doctrine, and therefore in looking at the legislative  
[12] intent we cannot say that condition has been met.

[13] Before we even look at the legislative  
[14] intent, we first have to look at the plain language of  
[15] the Act. If the language of the Act is plain, we do  
[16] not need to look at the legislative intent. In Seddon  
[17] versus Graham, the Utah Court of Appeals in 1991 gave  
[18] us that principle. We are bound by that concept of  
[19] law in this matter.

[20] Now, in determining whether or not a  
[21] statute is ambiguous, it is ambiguous if it can be  
[22] understood by reasonable, well-informed persons to  
[23] have different meanings. Can we actually say that  
[24] this language that I just read can have different  
[25] meanings? It states that the owner must enter into a

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[1] written contract with the original contractor,  
[2] licensed or exempt from licensure in the State of  
[3] Utah. I don't see that that is an ambiguous statute.  
[4] It's quite plain in what it means.

[5] Now, if one was to say well, you know,  
[6] perhaps the contract itself was ambiguous, and so  
[7] therefore we can look to some of the testimony that  
[8] has been offered today to help explain the terms of  
[9] the contract, I would reply in stating that the parol  
[10] evidence would prevent that testimony from being  
[11] considered to alter the terms of the contract. When  
[12] you are changing the parties to a contract, that, in  
[13] my opinion, would be a substantial change to a  
[14] contract that could not occur without the parties  
[15] signing a subsequent written document to agree to  
[16] that.

[17] It is an unfortunate circumstance, but the  
[18] Act was not written to include every circumstance that  
[19] existed out there. That is unfortunate. But this  
[20] tribunal lacks the authority to exercise equitable  
[21] powers. It cannot grant the alter ego argument that  
[22] has been raised. It is improper. If this is a form  
[23] of limited jurisdiction, we must stick to those  
[24] principles of law. We do not need to look to the  
[25] legislative intent because the statute is not

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[1] ambiguous. We have a circumstance where it is known  
[2] to everyone that the corporation entered into a  
[3] contract with the homeowner, and therefore that is the  
[4] only contract that we have to work upon. With that  
[5] criteria required by the statute, a condition that  
[6] must have been met in order to recover from the fund  
[7] has not been met, and therefore we request that the  
[8] claim be denied.

[9] **THE COURT:** Mr. Mitchell?

[10] **MR. MITCHELL:** As a matter of law, courts  
[11] interpret contracts in accordance with the parties'  
[12] agreement. One of the requirements for a valid  
[13] contract is a meeting of the minds. Both Mr. Mower  
[14] and Mr. Cise testified that they believed that the  
[15] licensed party was the contracting party. Courts  
[16] reform contracts as a matter of law to comport with  
[17] the parties' agreement. This body could take this  
[18] contract and say okay, Mr. Mower, who is a contractor,  
[19] not an attorney, Mr. Cise, who is an engineer, not an  
[20] attorney, entered into an agreement. They did it with  
[21] Legend Builders, Inc., the alter ego of Mr. Mower.  
[22] Forget about equitable principles for a moment. Just  
[23] as a matter the law these parties intended that a  
[24] licensed contractor would enter into a contract to  
[25] perform covered services and for a price. This body

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[1] can reform that contract, as a matter the law, and say  
[2] these parties intended to do exactly what the statute  
[3] requires, have a licensed contractor perform licensed  
[4] services.

[5] Now, as far as valuation goes, the first  
[6] time we've been aware that Mr. Mower was going to  
[7] stand up and say he didn't owe Mr. Goodrich any money  
[8] was this morning. Mr. Mower never sent anybody  
[9] besides this body a copy of that letter. We were not  
[10] prepared to put on counterevidence. I never talked to  
[11] Mr. Goodrich about that. Nonetheless, Mr. Goodrich  
[12] got on the stand and Mr. Goodrich didn't say I never  
[13] owed Mr. Mower any money. I don't owe him a cent.  
[14] Instead he got up and he told the truth. He said my  
[15] best recollection is that I owe him \$1,500 in addition  
[16] to the \$1,500 that I paid him. So far as valuation  
[17] goes, there could be an offset to the \$3,900 plus, but  
[18] we're asking for \$1,500.

[19] Now, I submit that that would be a  
[20] reasonable deduction from the amount that Mr. Goodrich  
[21] is entitled to under the contract, if the Board  
[22] decides that is the way to go. But as a matter of  
[23] law, that would not be proper. Mr. Goodrich owes Mr.  
[24] Mower no money at all because his bankruptcy has  
[25] discharged and prevented Mr. Mower from collecting

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[1] that \$1,500 on a separate contract that has nothing to  
[2] do with the contract before this Court. In other  
[3] words, Mr. Goodrich performed services for Mr. Mower  
[4] on Mr. Cise's project. Mr. Goodrich had Mr. Mower  
[5] work for him on other projects. So whatever was owed  
[6] or not owed on other projects is not necessarily tied  
[7] to this project, and whatever is owed over here was  
[8] discharged in the bankruptcy. I suppose that it's a  
[9] matter of fairness that \$1,500 would be reasonable to  
[10] deduct from the contract price.

[11] **THE COURT:** Mr. Goodman, anything else?

[12] **MR. GOODMAN:** I have nothing further, your  
[13] Honor.

[14] **THE COURT:** Mr. Patterson?

[15] **MR. WEBSTER:** One of the Division's  
[16] greatest concerns if this claim is paid is that it  
[17] really opens up the fund that anyone that could have  
[18] been licensed would qualify as, quote, a "licensed  
[19] contractor" under the Act. And I think that obviously  
[20] that result is just twisting the statutory language  
[21] beyond recognition and would not be appropriate. If,  
[22] for example, the Board were to determine, you know,  
[23] well, let's cut the baby in half like the wise king  
[24] did at one time and split the cost of the qualified  
[25] services, that of course would require recalculation

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[1] of the interest, the attorneys' fees and the other  
[2] things. But we just believe that it would not be  
[3] appropriate. The Supreme Court in Stout Western  
[4] Realty versus Broderick stated that parol evidence is  
[5] not permitted to vary the clear, unambiguous terms of  
[6] the parties to a written contract.

[7] **THE COURT:** What's the cite on that?

[8] **MR. WEBSTER:** That is 522 P2d 144.

[9] **THE COURT:** Thank you.

[10] **MR. WEBSTER:** Would you like the page  
[11] number, too?

[12] **THE COURT:** No, I'll find it.

[13] **MR. WEBSTER:** In that, I believe that the  
[14] terms are quite clear in this contract. It was Legend  
[15] Builders, Inc. who was the party. I'm sure that, you  
[16] know, if Legend Builders, Inc. had been able to have,  
[17] you know, a few more contracts, that it was a very  
[18] successful company and had some assets and if the  
[19] homeowners or someone else would have gone after that  
[20] corporation, the corporate shield would have been  
[21] raised as a protection. That's why individuals  
[22] utilize the corporation, so that they can have the  
[23] protection of that corporate shield. I think that to  
[24] allow an individual to enter into a contract knowing  
[25] that they're going to be relying upon that corporate

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[1] shield, and then at a later date when it seems a  
[2] little bit equitable to an innocent third party that  
[3] somehow we overlook that fact, I think that that would  
[4] be inappropriate.

[5] But the important thing that we need to  
[6] keep in mind is that in 55.55.301, individuals  
[7] performing contracting services must have a license.  
[8] There is not a circumstance where Legend Builders  
[9] Incorporated is exempt from that. And, you know, any  
[10] time a company is reorganized, it must be licensed  
[11] again by rule. Most of you are familiar with that.

[12] Perhaps the most important one is  
[13] 58.55.501.10, that in essence contracting licenses  
[14] cannot be lent out. That's a clear violation of  
[15] licensing laws. And as we all know, ignorance of the  
[16] law has never been a defense. So for Michael Mower to  
[17] stand up and say that it was him personally entering  
[18] into the contract really has to be a legal question,  
[19] because it was his corporation. Had he intended  
[20] himself to, under the contract, to be personally  
[21] liable, his name would have been on that contract.

[22] The Division is grateful for your time  
[23] today, for coming and serving the public. We're  
[24] grateful for that. We know that this is a difficult  
[25] case for you, but we remain firm that there is no

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[1] jurisdiction to consider the equitable argument. The  
[2] contract is unambiguous, parol evidence cannot be  
[3] considered, that we in fact in this case must deny the  
[4] claim because the written contract was not entered  
[5] into with a licensed contractor.  
[6] **THE COURT:** Thank you.  
[7] Mr. Patterson, for the record, and then  
[8] I'll take a final reply from you, Mr. Mitchell, in a  
[9] second. Do you have an extra copy of the invoice? We  
[10] are one short up here and I'll need one for the record  
[11] if you have one. It's Exhibit Number 3 dated December  
[12] 1st.  
[13] Thank you, Mr. Mitchell, I appreciate  
[14] that.  
[15] Mr. Mitchell, a final reply, inasmuch as  
[16] the Claimant bears the burden of establishing  
[17] qualification for payment from the fund.  
[18] **MR. MITCHELL:** The parol evidence rule is  
[19] meant to keep testimony out of evidence. It's got to  
[20] be timely asserted. It can't be asserted in a final  
[21] argument. If I stand up and ask my client to testify  
[22] to a term that's not consistent or contradicts a  
[23] written agreement, it's incumbent upon opposing  
[24] counsel to object to that and object to that before  
[25] the evidence comes in. Once it's in, it's like the

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[1] horse that's out of the barn. It's too late to shut  
[2] the door.  
[3] The parol evidence is before you. It's  
[4] the truth and nobody doubts it's the truth. You can  
[5] consider it as a matter of law. Furthermore, even if  
[6] the parol evidence rule had been timely asserted, the  
[7] parol evidence rule does not bar a party from  
[8] testifying that the terms of a contract were entered  
[9] into fraudulently or by mistake. There are all kinds  
[10] of exceptions to the parol evidence rule.  
[11] This case, you could find that parol  
[12] evidence rule does not apply because the parties were  
[13] mistaken. They believed that a licensed contractor  
[14] was doing the work. And they very well could have,  
[15] with no consequence to anything anywhere in the world,  
[16] entered into this contract between Mr. Mower  
[17] personally and Mr. Cise personally. It was a clear  
[18] mistake.  
[19] As far as ignorance of the law is not a  
[20] defense, that's a criminal doctrine. If you go out  
[21] and commit a crime, you can't go into court and say I  
[22] didn't know that was a crime. But it is not a civil  
[23] requirement. People go in to court and say my  
[24] attorney told me to do this all the time, and the  
[25] Court says okay, advice of counsel. Mistake.

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[1] Ignorance of the law. We'll take that into  
[2] consideration. You can take that into consideration.  
[3] I think the statute was meant to protect people like  
[4] Mr. Cise, and should be construed to protect him. And  
[5] we'll rest. Thank you.  
[6] **THE COURT:** The Board will take the matter  
[7] under advisement and render its decision in this case.  
[8] I would expect that will be out and I will commit to  
[9] the parties that will be out in a matter of two to  
[10] three weeks.  
[11] **MR. BANKHEAD:** Your Honor?  
[12] **THE COURT:** Yes?  
[13] **MR. BANKHEAD:** I have a question for the  
[14] Division.  
[15] **THE COURT:** Go ahead.  
[16] **MR. BANKHEAD:** Mr. Patterson, has the  
[17] Division ever initiated any kind of disciplinary  
[18] action against Mr. Mower for contracting without a  
[19] license in this matter?  
[20] **MR. WEBSTER:** At this point, actually,  
[21] yes, Legend Builders was referred to the investigation  
[22] unit. They have elected to not pursue it because  
[23] Legend Builders is no longer operative. The same is  
[24] true for Michael Mower Construction, Incorporated.  
[25] **MR. BANKHEAD:** What is the general

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[1] procedure in a matter of this kind where a person like  
[2] Mr. Mower changes entities but fails to change his  
[3] contractor's license? What is your usual procedure in  
[4] that?  
[5] **MR. WEBSTER:** That depends on the action  
[6] by the parties. If the Division becomes aware of it  
[7] through investigation or complaint, it is treated as  
[8] any other. It is handled by the investigations group,  
[9] and they'll treat it like any other unlicensed  
[10] activity. If the party contacts the Division prior to  
[11] complaint or investigation, there are procedures in  
[12] place whereby they can continue working if they are  
[13] actively pursuing relicensure. But they must be  
[14] actively pursuing relicensure.  
[15] **MR. BANKHEAD:** Thank you.  
[16] **THE COURT:** The Board will take the matter  
[17] under advisement. This hearing is adjourned.  
[18] (Whereupon, the proceedings were concluded at 11:06  
[19] a.m.)  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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Lawyer's Notes

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[1]  
[2] CERTIFICATE

[3]  
[4] STATE OF UTAH )  
 ) ss.

[5] COUNTY OF SALT LAKE)  
[6]

This is to certify that the  
[7] foregoing adjudicative hearing held before Judge J.  
Steven Eklund was held in and for the State of Utah;

[8]  
That the above-named proceedings taken by me  
[9] in stenotype, and thereafter caused by me to be  
transcribed into typewriting, and that a full, true,  
[10] and correct transcription of said testimony so taken  
and transcribed is set forth in the foregoing pages  
[11] numbered from 4 to 93, inclusive.

[12] I further certify that after the said  
proceedings were transcribed, the original of same was  
[13] retained by the Department of Commerce.

[14] I further certify that I am not of kin or  
otherwise associated with any of the parties to said  
[15] cause of action, and that I am not interested in the  
event thereof.

[16]  
Witness my hand and official seal at Salt  
[17] Lake City, Utah, this 20th day of October, 2000.  
[18] My commission expires:  
May 24, 2003

[19]  
[20]  
[21] Kathy H. Morgan, CSR, RPR

[22]  
[23]  
[24]  
[25]

## Lawyer's Notes

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